

CASE NO.:
Appeal (civil) 5993 of 1998

PETITIONER:
Mahadeva & Ors.

RESPONDENT:
Tanabai

DATE OF JUDGMENT: 20/04/2004

BENCH:
R.C. LAHOTI & ASHOK BHAN.

JUDGMENT:
J U D G M E N T

R.C. Lahoti, J.

Tanabai, the respondent herein, is the daughter of late Nivriti Vithoba Laad Laad. Nivriti Vithoba Laad owned and possessed land survey no.48/1 measuring 14 acres 15 guntas in the village Ravatagaon. It appears that Nivriti Vithoba Laad executed an agreement to sell the said agricultural land in favour of the defendants and also delivered possession thereof to the prospective vendees. Nivriti Vithoba Laad died. The plaintiff, Tanabai is the sole legal heir of Nivriti Vithoba Laad. On 22.11.1978 Tanabai filed a suit for declaring the agreement dated 4.4.1967 as null and void and seeking recovery of possession over the land from the defendants. The suit was contested by the defendants submitting that the agreement was valid and binding on the plaintiff; that the defendants were in possession of the property under the agreement and entitled to protect their possession under Section 53-A of the Transfer of Property Act; and that they had also perfected the title by adverse possession over the land.

The plea of the defendants claiming acquisition of title by adverse possession has been negatived by all the three courts upto the High Court. However, the plea under Section 53-A of TP Act found favour with the Trial Court and the First Appellate Court resulting into dismissal of the suit. The agreement was held to be valid and binding on the plaintiff.

The plaintiff preferred Second Appeal which was admitted for hearing on following two questions of law framed by the High Court :-

"1. Whether the courts below are justified in dismissing the suit of the plaintiff-appellant inspite of clear evidence of the defendant-respondent that he is not ready to pay the remaining consideration amount ?

2. Whether it is open to the respondents to plead in his defence under Section 53-A of the T.P. Act despite finding by the courts below that the plaintiff's title is established."

However, at the time of hearing the High Court formed an opinion that only one question really arose for consideration in the Second Appeal and that was as under :-

"Whether the defendant can continue to be

in possession notwithstanding the facts that they have not chosen to enforce the agreement of sale till now ?"

By a brief reasoning that the defendants who were claiming title by adverse possession also, could not succeed by claiming protection under Section 53-A of the T.P. Act and inasmuch as the plea of acquisition of title by adverse possession was negatived, their possession must be held to be illegal, the High Court has allowed the Second Appeal and directed the suit filed by the plaintiff to be decreed. Aggrieved by the judgment of the High Court, the defendants have filed this appeal by special leave.

During the course of hearing, at one stage, taking notice of the fact that the defendant-appellants, agriculturists by vocation, have remained in possession of land ever since 1967, i.e., for about 37 years by this time this Court suggested the learned counsel for the parties explore the possibility of mutual settlement. The learned counsel for the defendant-appellants made an offer under instructions that the appellants were prepared to pay an amount of Rs.50,000/- over and above what was already paid to the late father of the plaintiff-respondent under the agreement and the plaintiff-respondent should not insist on claiming possession but rather should execute a deed of sale at the cost and expenses of the defendant-appellants and thus bring the whole dispute to an end. The learned counsel for the plaintiff-respondent took time for having instructions and after adjournments told us that the plaintiff-respondent was not responding to the communications made by the learned counsel to her. In fact, a demand draft drawn in the name of the plaintiff-respondent for a sum of Rs.50,000/- on Vijaya Bank, Miraj, bearing no. 337791 dated 21.3.2004 was produced by the learned counsel for the defendant-appellants with readiness to tender the same to the plaintiff-respondent which tender the learned counsel for the plaintiff-respondent rightly regretted to accept as he was not having any instructions in that regard from the plaintiff-respondent. In such circumstances, the DD has been returned to the learned counsel for the defendant-appellants after being perused by the Court.

We have heard the learned counsel for the parties on the merits of the appeal. We are of the opinion that the Second Appeal has not been satisfactorily disposed of by the High Court.

The judgment of the High Court is based on a question framed during the course of writing of the judgment which is in departure from the two questions of law on which the appeal was admitted for hearing. The whole emphasis shifted from the core issues. Then, the High Court has not discussed any law and has also not assigned reason, much less a satisfactory one, for taking a view different from the one concurrently taken by the two courts below. The singular reason assigned by the High Court for denying the benefit of Section 53-A of the TP Act is not a sound reason by itself in view of the decision of this Court in *Shrimant Shamrao Suryavanshi and Anr. Vs. Pralhad Bhairoba Suryavanshi (Dead) by Lrs. and Ors.* - (2002) 3 SCC 676. This Court has held that merely because the suit for specific performance at the instance of the vendee has become barred by limitation that by itself is not enough to deny the benefit of the plea of part performance of agreement of sale to the person in possession.

As the judgment of the High Court is one of reversal and that too bereft of any reason, the same cannot be sustained. The appeal is allowed. The judgment of the High Court is set aside. Instead, the Second Appeal is remanded to the High Court for hearing and decision afresh in accordance with law. Before deciding the appeal on merits, the High Court would do well to explore the possibility of settlement between the parties in view of the proceedings which took

place in this Court. No order as to the costs.

JUDIS