

Order below Exh. 164 in R.C.S. No.79/1994

This is an application filed by defendant for framing additional issues in respect of adverse possession. According to the defendant in the suit he has taken plea that he has become owner of suit property by adverse possession but issue regarding it has not been framed in issues at Exh 50. That issue is necessary for doing complete justice between the parties. So it is prayed that additional issue in respect of adverse possession may be framed.

02. This application is resisted by plaintiff contending that defendant cannot claim right as to adverse possession as plaintiff has filed suit for removing encroachment made by defendant and for vacant possession in limitation moreover the defendant is company so it cannot claim such type of relief ,therefore he prayed for rejection of application.

03. Heard both sides. Perused the plaint and W.S. plaintiff has averred that certain area in the suit property was sold by their predecessor to the defendant company but remaining area was in his possession in spite of it the defendants made encroachment in it and made construction in it and fence therefore he has sought mandatory injunction against the defendants. The defendants denied these fact and according him they are owner the suit property suit property was part of the land sold to them and plaintiffs predecessor have never objected them. The defendants have also taken plea of ownership by way of adverse possession. Thus the encroachment issue is dependent on the ownership of land and can be determined on basis of it. Both parties are claiming ownership over suit property ;the defendants by way of adverse possession. The law of adverse possession is now well settled. In the case between **Gurudwara Sahib Vs. Gram Panchayat Village Sirth mandatory ala and another Vs. Gram**

Panchayat Village Sirthala and Anr. reported in **2014 (4) Mh.L.J. 74** Hon'ble Apex Court in para No. 7 observed that, if proceeding filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.

04. The present suit is filed for mandatory injunction. Issues arises when material proposition of law or fact is claimed by one party and denied by other. In the present suit fact as to ownership of plaintiff is denied by defendants by claiming ownership over suit property by way of adverse possession. Moreover, plea as to ownership by adverse possession can be claimed by defendants in view of case law cited supra . Defendant being a company is no bar to take plea of adverse possession. In the issues at exh 50 issue as to ownership of defendants by way of adverse possession is not framed ,it is necessary to frame it in view of above discussions to fully and finally decide the suit on merits. No any prejudice will be caused to the plaintiff as he has opportunity to cross examine the defendants ,it will also avoid multiplicity of proceedings between the parties. Resultantly following order is passed.

ORDER

- 1) Additional issue is framed as “Does defendants prove that they have became owner of the suit property by way of adverse possession”?
- 2) The above issue will be added in Issues at Exh.50.

sd/-

(S.H.Panhale)

Date :- 30/11/2017.

Jt. Civil Judge (J.D.) Sawantwadi.