

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 409 OF 2026

Satyabhamabai Namdeo Takate ...Appellant

Versus

Baburao Shivram Derle ...Respondent

**WITH
INTERIM APPLICATION NO. 6639 OF 2026**

Mr. Ajay Joshi, for the Appellant.

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CORAM: N. J. JAMADAR, J.

DATED: 2nd SEPTEMBER, 2026

Order:-

1. Heard the learned Counsel for the Appellant.
2. This Second Appeal is directed against a judgment and decree dated 6th May, 2026 passed by the learned District Judge, Niphad, in Regular Civil Appeal No. 45/2009, whereby the appeal preferred by the Appellant - original Plaintiffs against a judgment and decree dated 1st April, 2009 passed by the learned Civil Judge, Niphad, in Regular Civil Suit No. 116 of 2002, thereby dismissing the suit instituted by the Appellant, for declaration and temporary injunction, came to be dismissed.
3. The Plaintiffs asserted, Radhabai, who passed away issueless on 31st January, 1934, was the holder of the property

bearing Survey No. 143, Mauje Karajgaon, Taluka Niphad. Radhabai had bequeathed the said land under a Will dated 7th February, 1934 to Narayan and Vithoba, the sons of her brother, and Pandurang, the son of her sister, jointly. Accordingly, vide Mutation Entry No. 654, the names of Narayan, Vithoba and Pandurang, the predecessors-in-title of the Plaintiffs, came to be mutated to the Record of Rights of Survey No. 143, admeasuring 28 Acres 31 Gunthas.

4. The Plaintiffs claimed on 25th December, 1960, Mutation Entry No. 2560 was certified, to record that the said land, bearing Survey No. 143, was partitioned among Pandurang, Rangnath; the son of Vithoba, and Narayan, in equal shares, i.e. 9 Acres and 18 Gunthas each, and 7 Gunthas of land was kept in common enjoyment. The land allotted to Pandurang was thus given Survey No. 143/1, the land allotted to Ranganath was given Survey No. 143/2, and the land allotted to Narayan was given Survey No. 143/3. In the Falni 12 recording the subdivision of the Survey numbers, however, under Mutation Entry No. 2600 dated 28th November, 1961, the area of land bearing Survey No. 143/1 allotted to Pandurang was shown 7 Acres and 27 Gunthas only, and that of Ranganath was increased to 10 Acres and 6 Gunthas, and that of Narayan to 10 Acres and 23

Gunthas. However, Pandurang, the predecessor-in-title of the Plaintiffs and, after the demise of Pandurang, the Plaintiffs have also been in actual and physical possession and cultivation of 9 Acres and 18 Gunthas of land.

5. Defendant Nos. 1 to 3, who purchased the land bearing Survey No. 143/2, admeasuring 4 Hectares and 9 Are, from Ranganath Vithoba, allegedly started to cause obstruction to the possession of the Plaintiffs on 2nd September 2002, contending that the Plaintiffs had committed encroachment over an area admeasuring 1 Hectare and 6 Are. Thus, the Plaintiffs instituted the suit seeking declarations that, the Plaintiffs were the owners of the land admeasuring 9 Acres and 18 Gunthas, the Sale Deed executed in favour of Defendant Nos. 1 to 3, to the extent of an area, over and above 9 Acres and 18 Gunthas, was illegal and not binding on the Plaintiffs, and to restrain the defendants from causing obstruction to the possession and cultivation of the purportedly encroached portion admeasuring 1 Hectare and 6 Are and, in the alternative, a declaration that the Plaintiffs had acquired ownership over the purported encroached portion by way of adverse possession.

6. The learned Civil Judge dismissed the suit by a judgment and decree dated 1st April, 2009, observing, *inter alia*, that the

Plaintiffs failed to establish that Pandurang, their predecessor-in-title, has got land admeasuring 9 Acres and 18 Gunthas in the partition among Pandurang, Raghunath, Vithoba and Narayan. The Plaintiffs failed to establish their possession. The relief of declaration was barred by law of limitation and the principle of estoppel.

7. Being aggrieved, the Plaintiffs had preferred Regular Civil Appeal No. 45 of 2009, which was allowed by the learned District Judge. However, in Second Appeal No. 82 of 2017, the said judgment and decree was set aside by this Court on 19th August, 2014 and the First Appeal was remitted back to the learned District Judge for afresh decision. By the impugned judgment and order, the learned District Judge concurred with the view of the trial Court and dismissed the appeal.

8. Mr. Joshi, the learned Counsel for the Appellant, submitted that the courts below were in error in delving into the legality and validity of the joint acquisition of the property by Pandurang, Raghunath and Narayan questioning the Will executed by Radhabai, when there was no challenge to the legality and validity thereof by any of the parties to the suit. Secondly, the courts below misdirected themselves in discarding Mutation Entry No. 2560, under which original Survey No. 143

was subdivided among Pandurang, Raghunath and Narayan in equal shares of 9 Acres and 18 Gunthas, in the face of the presumption of correctness of the mutation entries under the Maharashtra Land Revenue Code, 1966 and Section 34 of the Indian Evidence Act. Thirdly, the learned Civil Judge as well as the learned District Judge committed a grave error in law in placing reliance on Mutation Entry No. 2600, evidencing the subdivision of Survey No. 143 as if Falni 12 conferred title. Lastly, the issue of limitation was decided by the trial Court in complete disregard to the provisions of the Limitation Act, 1963. On each of the aforesaid counts, Mr. Joshi would urge, substantial question of law arise for consideration.

9. Evidently, Mutation Entry No. 654, purportedly certified on 21st April, 1934, constitutes the substratum of the Plaintiffs claim. It records, Radhabai, who passed away on 31st January, 1934, had bequeathed the land Survey No. 143 to Narayan, Vithoba and Panduran under a will executed on 20th February, 1934. The courts below were justified in examining the correctness of the case set up by the Plaintiffs as the Will was purportedly executed by Radhabai after she passed away on 31st January, 1934. The reluctance of the courts below to believe the Plaintiffs version as regards the acquisition of the suit property

by their predecessors-in-title, as it constituted the genesis of the Plaintiffs claim, thus cannot be faulted at. Therefore, the Plaintiffs cannot bank upon the said Mutation Entry No. 654 to bolster up the case that Pandurang, Vithoba and Narayan were entitled to an equal share in Survey No. 143.

10. Consequently, even the certification of Mutation Entry No. 2560, becomes contentious. Therefore, the Plaintiffs cannot draw much mileage from certification of Mutation Entry No. 2560, which evidences purported sub-division of Survey No. 143 in equal shares, as the edifice of allotment of equal share in Survey No. 143 got dismantled with Mutation Entry No. 654 being rendered completely unworthy of credence. Even otherwise, mutation entries do not make or unmake title.

11. The situation which thus obtained was that, under Mutation Entry No. 2600, evidencing Falani 12, Survey No. 143, was subdivided among Pandurang, Raghunath and Narayan, and particular areas of land were shown against Survey Nos. 143/1, 143/2 and 143/3. Mutation Entry No. 2600 assumes importance in the sense that, under the said Falni 12 the sub-division of not only Survey No. 143 but also the other survey numbers in the said village was effected. It would thus carry more weight.

12. Evidently, the Record of Rights in respect of subject lands were corrected in accordance with Mutation Entry No. 2600, effected on 28th November, 1961. The suit came to be instituted in the year 2002. It defies comprehension that the Plaintiffs would not have had the opportunity to examine the discrepancy in the area of Survey No. 143/1 and agitate the issue for over 40 years.

13. From the aforesaid standpoint, the courts below have evaluated the evidence and material on record and arrived at concurrent findings of fact. Such concurrent findings of fact cannot be interfered with in an appeal under the regime of Section 100 of the Code. No question of law, much less a substantial question of law, arises for consideration.

14. The Second Appeal thus stands dismissed.

15. In view of the dismissal of the Second Appeal, IA/6639/2026 also stands disposed.

[N. J. JAMADAR, J.]