

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Review Application No. 2 of 2015
In
Second Appeal No.125 of 2011**

Sharad s/o Gangaram Kotambe. .. **Applicant.**

Versus

Vijay s/o Digambar Kotambe
since deceased through legal
representatives. .. **Respondents.**

Shri. S.R. Andhale, Advocate, for applicant.
Shri. Sanjay D. Ghayal, Advocate, for respondents.

CORAM: T.V. NALAWADE, J.

DATE : 8th SEPTEMBER 2015

ORDER:

1) The application is filed for review of the order made in Second Appeal Nos.124 and 125/2011. Both sides are heard.

2) Second Appeal No.125/2011 was filed by the present applicant. This court considered both the appeals. There was dispute regarding open space which was lying between constructions of the parties. This Court considered oral evidence and also documentary evidence. The appellant/applicant was relying on the record of

assessment and said record was considered. Burden was on the applicant to show that he was in actual possession. It was dispute over open space and this Court has observed that when open space is involved, only tethering of cattle in open space cannot make out a case of possession. On the basis of record and the oral evidence this Court has given the decision.

3) Learned counsel for the applicant placed reliance on a case reported as **2007 (1) Bom.C.R. 931 (Ramrao Chudaman Patil v. State of Maharashtra)**. In this case the reason behind the record of assessment is considered and the relevant rules made under the Bombay Village Panchayats Act are considered. There cannot be dispute over the propositions made in this case. Facts of the present case are altogether different. This Court held that the finding given by the appellate Court against the applicant cannot be disturbed as it was finding of fact and it was on the basis of material available. There is no possibility of interference in review application in view of scope of review. The application stands rejected.