

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

**SECOND APPEAL NO.534 OF 2014
WITH
CIVIL APPLICATION NO.308 OF 2014**

Smt. Kasturi Basappa Kangoni Appellant

Vs.

Mallappa Irappa Kangoni Respondents
(since deceased) thru' L.Rs.
Smt. Parvati Mallappa Kangoni & Ors.

Mr. Uday P. Warunjikar, Advocate for the Appellant.
Mr. Amit Shetye, Advocate for the Respondents.

Coram : Smt. R.P. SondurBaldota, J.
Date : 10th February, 2015.

P.C.

1 This appeal challenges the concurrent findings of the courts below as regards the title of the appellant to the suit premises and her right to exclusive possession thereof.

2 The appellant had filed Regular Civil Suit No.41 of 2002 against the respondent, her brother-in-law, being the brother of her husband for his eviction from the suit premises. The trial court, by it's judgment and decree dtd. 31st March, 2005 dismissed the suit holding

that the appellant has no right to the suit premises and that occupation thereof by the brother-in-law was not unauthorised. The decree of dismissal of the suit was unsuccessfully challenged by the appellant by filing Regular Civil Appeal No.104 of 2005. The District Court dismissed the appeal by its judgment and order dtd.17th January, 2013.

3 The appellant filed the suit alleging that the suit premises was the ancestral property of her husband and was being enjoyed by him accordingly. The husband had permitted the respondent, his brother to reside with him. The husband expired on 26th June, 1996. Thereafter, the municipal records were mutated on 13th February, 1997 and the appellant was shown as the owner of the suit premises. The appellant, then asked the respondent to vacate the suit premises and when he avoided to vacate, she initially sent him a notice and later filed the suit herein for possession of the suit premises.

4 The respondent, in his written statement claimed that the suit premises originally belonged to his father, Irappa, who died leaving behind three sons, the respondent, one Bhimanna and Basappa the husband of the appellant. Basappa was given in adoption and after the adoption, he ceased to have any right to the ancestral property. After the death of the father, there was oral partition between the respondent and Bhimanna and the respondent became exclusively entitled to the suit premises. The respondent alleged that the husband

of the appellant had in connivance with the officers of City Survey got his name mutated in the municipal records. The respondent, by way of an alternative plea claimed right to the suit premises by adverse possession.

5 The courts below rejected the claim of both the sides to exclusive right to the suit premises. Admittedly, the suit premises is an ancestral property. The claim of the respondent to exclusive right thereto was based on the adoption of the husband of the appellant. The respondent, however failed to establish the adoption. Therefore the courts below held that the appellant and the respondent are equally entitled to it. This is a correct finding of fact based on the material on record and hence it cannot be interfered with. There is no substantial question of law arising for consideration of the court. Hence, the Second Appeal is dismissed.

6 In view of dismissal of the Second Appeal, the Civil Application does not survive, the same is accordingly disposed off.

(Smt. R.P. SondurBaldota, J.)