

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Second Appeal No. 61 of 2013
Datta and ors v. Pandurang and ors

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's Orders.

Court's or Judge's orders.

Mr J. S. Wankhede, Adv for appellants
 Mr C. A. Joshi, Adv for respdts 1 to 9

CORAM : A. V. NIRGUDE, J

DATED : 30th March 2015

1. Heard learned counsel for the parties.
2. This appeal is by the original defendants against whom suit for possession on the basis of title is decreed. It was all along their defence that they were in possession of suit since prior to 1969. They also suggested that due to adverse possession, they perfected their title. However, the Written Statement does not indicate any ingredients pleaded for proving case of adverse possession. In view of this, there was no possibility of leading evidence for proving adverse possession. The appellants took vacillating stands. On one hand, they said that the land came to them because the then owner allowed them to cultivate it. They also suggested that the then owner received various sums as loan and because of the same, she allowed them to cultivate the land. At no time, they

stated that their possession became hostile to the original owner during her life-time or it became hostile after her death and such hostility continued for more than twelve years. Learned Judge of the Appellate Court rightly held that the plea of adverse possession was not proved at all. There is no substantial question of law arising in this appeal.

4. Learned counsel for the appellants admitted that at one point of time during the pendency of this appeal before this Court, he was considering as to whether he should take a defence based on Section 53A of the Transfer of Property Act. He states that such defence was not taken as it was not available to his client. He categorically states that only defence his clients could have taken and are taking is that of adverse possession.

5. Appeal must fail and is accordingly dismissed. Request for stay of execution is refused.

JUDGE

joshi