

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

SECOND APPEAL NO. 288 OF 2016

Ratan s/o Tukaram Dalve

..... **APPELLANTS**

V E R S U S

Vijaykumar s/o Suryakant Kulkarni

..... **RESPONDENTS**

.....

Mr. M.B.Narwade, Advocate for Appellants.

Mr. Ajit Kadethankar, Advocate for

G.P.A. of Respondent.

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CORAM : T.V.NALAWADE, J.

DATE : 20th APRIL, 2016

ORAL ORDER :-

1. The Appeal is filed to challenge the Judgment and Decree of R.C.S. No. 46/2003 which was pending in the Court of the Civil Judge [Jr. Division], Shevgaon and also the Judgment and Decree of R.C.A. No. 46/2011 which was pending in the Court of the District Judge - 5, Ahmednagar. Both sides are heard.

2. The Suit was filed against the present appellant by the respondent for recovery of possession of some portion

of G.No. 966. It is the case of the plaintiff that he got the property from original owner Malanbai and defendant made encroachment over the portion of 33 Sq. Meters in the year 1999.

3. The defendant contested the Suit by filing Written Statement. He contended that he came to this village in the year 1970-71 and he started helping the owner Malanbai in the cultivation of her land. It is his case that Malanbai gave 5 R. portion from G.No. 966 and there he made construction of hut. He contended that the value of the portion was deducted from his wages by Malanbai. He contended that his possession is there for more than 12 years which is adverse and he has become owner of the suit property.

4. Both sides gave evidence. The defendant did not dispute the title of plaintiff over land G.No. 966. The encroachment made by the defendant was ascertained by the trial Court. On one hand defendant contended that he came in possession due to the permission given by Malanbai and then he made construction of hut on it. He also made contention on the other hand that this property was either gifted or sold to him. The defendant could not have proved the transaction of gift or sale as no document was created. If the remaining contentions of the defendant are considered, he admits that he entered his name over the disputed portion with Malanbai. The plaintiff came in picture after 1993 after the death of Malanbai. Even if best possible case of the

defendant is accepted, it can be said that defendant started claiming right adverse to the title from the plaintiff from the year 1993. The Suit was filed in the year 2003 and so there was no question of claiming ownership due to adverse possession. Accordingly findings are given by the Courts below and they are concurrent findings. This Court sees no reason to interfere in the decision given by the Courts below.

5. In the result, Second Appeal stands dismissed. In view of dismissal of Second Appeal, C.A. No. 5160 of 2016 does not survive and stands disposed of.

[T.V.NALAWADE, J.]