

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

SECOND APPEAL NO.587 OF 2014

Maruti Dattu Wanjari (since deceased)
through his legal heirs

1-a. Shrikant Maruti Wanjari & Ors. .. Appellants

Vs.

Bayakka Annappa Korvi & Ors. .. Respondents

Mr.Manoj Patil for the Appellants.

Ms.Manjiri Parasnis for the Respondent nos.2 to 6.

CORAM : R.D. DHANUKA, J.

DATE : 30th August 2016

P.C.

. By this appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellants have impugned the judgment and order dated 14th February 2014 passed by the learned District Judge-1 dismissing the appeal filed by the appellants (original defendants). The appellants had impugned the judgment and decree dated 24th September 2009 passed by the learned trial Judge in a suit for vacant and peaceful possession of the property filed by the original plaintiffs. Some of the relevant facts for the purpose of deciding this appeal are as under :-

2. It was the case of the original plaintiffs that the suit property bearing CTS No.1500 admeasuring 94 sq.mtrs situated at village Shivanakwadi was owned by late Annappa Mallu Koravi. The plaintiffs are the legal heirs of the said Annappa Mallu Koravi. It was the case of the plaintiffs that the defendants used to help late Annappa and the plaintiff no.1 in their business. The plaintiff no.1 continued the said business in the suit property for few days after the death of Annappa on

27th November 1981. However, due to old age, she could not continue the said business and went to reside with her sons at Ichalkarnaji. For the purpose of safety and for cleanliness of the suit property, the plaintiffs permitted the defendant to occupy the same gratuitously. When the plaintiffs visited the suit property in the year 2006, the defendant refused to hand over the suit property and disputed their title over it. The plaintiffs thereafter demanded possession by issuing a written notice to the defendant on 8th February 2006. The defendant however refused to hand over the possession of the suit property. The plaintiffs accordingly filed a suit for vacant and peaceful possession of the suit property. The suit was resisted by the defendant by filing written statement.

3. The learned trial Judge framed six issues for determination. The plaintiffs examined the plaintiff no.6. The defendant examined himself and another witness.

4. The learned trial Judge has rendered a finding of fact that except the bare words, there was no reliable evidence produced by the defendant to show that he hold the possession of the suit property by denying the title of late Annappa or the plaintiffs 12 years prior to the date of filing of the suit. The defendant also did not even plead in the written statement the clear date of commencement of the hostile possession. In the cross-examination of the defendant, he deposed that he does not have acquaintance with the plaintiffs and late Annappa. Though the learned trial Judge rendered a finding that the defendant was in permissive possession of the suit property, it is found that the possession of the defendant was not adverse to the title of the plaintiffs.

5. In my view, the learned trial Judge has considered all the documentary as well as oral evidence and has rendered a finding that the possession of the defendant was only in permissive possession and was not adverse to the title of the plaintiffs. The learned trial Judge, in my view, has rightly directed the defendant to hand over vacant and peaceful possession of the suit property to the plaintiffs.

6. A perusal of the impugned judgment and order passed by the appellate Court indicates that the appellate Court has also framed four points for determination and has independently considered the entire evidence led by both the parties and has rendered a finding of fact that the original plaintiffs were entitled for possession of the suit property and that the defendant had failed to prove his ownership of the suit property by way of adverse possession. The findings recorded by the Courts below are concurrent findings which are not perverse and thus cannot be interfered with by this Court under Section 100 of the Code of Civil Procedure, 1908. No substantial question of law arises in this appeal. Appeal is devoid of merit and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.