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

**SECOND APPEAL NO.231 OF 2011
WITH
CIVIL APPLICATION NO. 6366 OF 2011**

Smt. Mayabai w/o Narayan Fateh Lashkar,
Age: 62 years, Occu: Household,
Resident of 1-5-52, Begampura,
Aurangabad

..APPELLANT
(Orig.Deft.No.3)

VERSUS

1. Smt. Bhaimabai w/o Chhannulal
Meghwale, Age: 60 years,
Occu: Household,
Resident of Juna Bazar,
Aurangabad
2. Smt. Basantibai w/o Ramlal Gomtiwale,
Age: Major, Occu: Household,
Resident of Khatikpura,
Jalna
3. Smt. Mannubai w/o Sitaram Batewale,
Age: 60 years, Occu: Household,
Resident of Kanhaiya Nagar,
Jalna

..RESPONDENTS
(Res. No.1 – Orig. Plff.
Res. No.2 & 3 – Orig.
Defendants no.1 & 2)

Mr D. V. Soman, Advocate for appellant;
Ms. Sheetal V. Salunke, Advocate holding for Mr V. D. Salunke, Advocate
for respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 21st July, 2017

ORAL ORDER

Against the concurrent findings of possession recorded against
appellant-original defendant no.3, the present Second Appeal.

(2)

2. Mr Soman, learned Counsel appearing on behalf of the appellant-defendant no.3 would urge that though no written statement was filed, the plea of adverse possession and that of limitation should have been appreciated by the Courts below. According to him, if an opportunity is given to the appellant by remanding the matter by putting him to some conditions, the suit can be worked out afresh within stipulated time.

3. The prayer is opposed by the learned Counsel appearing on behalf of respondent no.1-original plaintiff.

4. The suit for possession is based on title, whereas the present appellant-defendant claims adverse possession over the suit property and as such title to the same.

5. It is required to be noted that the appellant preferred Civil Revision Application No.576 of 2001 against an order of rejection of prayer for permission to file written statement in which the appellant has given-up right to file written statement, however, he is permitted to cross-examine the witnesses.

6. The Trial Court, while appreciating the evidence of the witnesses of the plaintiff noted that there was no relationship of marriage of Shankar with Ayodhyabai. It is further observed that Shankar never stayed with Nandabai, mother of the plaintiff and as such, possession of the suit premises was sought from the appellant.

(3)

7. The Trial Court then upon appreciating the evidence as is brought on record by the respondents, declared present respondent no.1-plaintiff as owner of the suit house.

8. It is then required to be noted that the plea of adverse possession was not established by the present appellant, though the same is sought to be canvassed before this Court. The Trial Court in paragraph 33, while dealing with such issue has noted that the appellant has failed to establish his possession adverse to that of respondent No.1 – plaintiff, which observations were independently assessed and endorsed by the lower appellate Court. The lower appellate Court considered the revenue entries in detail and further recorded dismissal of appeal.

9. In view of above, in my opinion, present appeal hardly involves any substantial question of law. Second Appeal fails and stands dismissed.

In view of dismissal of appeal, civil application does not survive and stands disposed of.

(N.W. SAMBRE, J.)

amj