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

SECOND APPEAL NO. 492 OF 2016

Digambar s/o Ramchandra Wagh
age 75 years occupation agriculture
R/o Talai Taluka Erondol Dist. Jalgaon

... APPELLANT
(Original defendant)

VERSUS

Jagannath s/o Ramchandra Wagh,
age 79 years occupation pensioner
R/o Plot No. 2 Renuka Nagar, near Ramnagar,
Golibar Tekadi, Dhule Taluka and Dist. Dhule.

...RESPONDENT
(Original plaintiff)

**WITH
SECOND APPEAL NO. 493 OF 2016
WITH
CIVIL APPLICATION NO. 10237 OF 2016
IN
SECOND APPEAL NO. 493 OF 2016**

Digambar s/o Ramchandra Wagh
age 76 years occupation agriculture
R/o Talai Taluka Erondol Dist. Jalgaon

... APPELLANT
(Original defendant)

VERSUS

Jagannath s/o Ramchandra Wagh,
age 79 years occupation pensioner
R/o Plot No. 2 Renuka Nagar, near Ramnagar,
Golibar Tekadi, Dhule Taluka and Dist. Dhule.

...RESPONDENT
(Original plaintiff)

Mr V.D. Salunke, Advocate, for appellant, in both appeals.
Mr P.S. Shendurnikar, Advocate for respondent sole, in both appeals.

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CORAM : N.W. SAMBRE, J.**DATE : 7th July, 2017****ORAL ORDER**

These two appeals are by the same person, who was plaintiff in Regular Civil Suit No. 17/2003 and defendant in Regular Civil Suit No. 22/2008. Regular Civil Suit No. 17/2003 was filed by present appellant for declaration and permanent injunction, whereas R.C.S. No. 22/2008 was filed against appellant for declaration and possession. The latter suit came to be decreed, however, suit of the present appellant for declaration and injunction came to be dismissed by judgment and decree dated 10th September 2009, which was confirmed in Regular Civil Appeal No. 205 of 2009 and R.C.A. No. 206 of 2009. As such, these two appeals.

2. Shri V.D. Salunke, learned Counsel for the appellant, would invite attention of this Court to the judgments of the Trial Court and the Appellate Court in both matters, so as to contend that the finding of the possession of appellant ought to have been recorded in his favour, when the suit of the respondent was for possession against him. In addition, he would submit that the plea of adverse possession, though was dealt with by the Appellate Court, however, the Trial Court has

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neither framed an issue nor gone into said aspect of the matter. He would try to make out case for remand in view of provision of Order XLI Rules 23 and 24 of the Civil Procedure Code.

3. Per contra, Shri Shendurnikar, learned Counsel for the respondent/decreed holder would urge that the findings of both the Courts below are concurrent against the appellant, particularly, having held that the appellant is not in possession of the suit property, and he having denied the title of the decreed holder, the plea of adverse possession is not available to him.

4. Having considered rival submissions, in my opinion, the appeal lacks substantial question of law, which does not call for any interference in exercise of powers under Section 100 of the Civil Procedure Code. The appellant herein having expressly denied title of the decreed holder, the plea of Adverse Possession is properly dealt with and rejected. Findings are recorded as regards ownership of the decreed holder over the suit property.

5. One more aspect of which this Court must take note of is, the appellant claims to be in possession over the suit property by virtue of mutation entry carried out in his favour for long period, which is claimed

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to be a basis for inferring his possession. Such Mutation Entry is to be considered with evidential value of, for fiscal purpose.

6. Both the Courts below having appreciated the evidence in the backdrop of pleadings of respective parties, recorded concurrent finding of fact about the possession of the present appellant in negative.

7. In the aforesaid backdrop, in my opinion, no case for interference in the Appellate Jurisdiction is made out. Both the appeals fail. Hence both appeals stand dismissed.

8. In view of dismissal of both the Second Appeals, Civil Applications pending, if any, do not survive and same stand disposed of.

(N.W. SAMBRE, J.)

pjm