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

**SECOND APPEAL NO.518 OF 2013**

|                             |     |             |
|-----------------------------|-----|-------------|
| Dada Katare (dead)          |     |             |
| Through Legal heirs         | ... | Appellants. |
| V/s.                        |     |             |
| Vinayak Shiva Katare (dead) |     |             |
| Through Legal heirs         | ... | Respondents |

Mr. Nikhil Pujari i/by Pramod N. Joshi, for the appellants.

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 24<sup>th</sup> JULY, 2018.**

**P.C. :**

- 1] Heard learned counsel for the appellants.
- 2] This appeal is preferred against the judgment and decree dated 30.8.2013, passed by the District Judge-2, Niphad thereby dismissing Civil Appeal No.75 of 2006, preferred by the appellant against the judgment and decree dated 25.7.2005, passed by the Civil Judge J.D. Niphad, in R.C.S. No.129 of 1993.
- 3] The said suit was filed by the appellant claiming ownership over the suit premises on the basis of adverse possession and also for restraining the respondents from causing obstruction to his possession.
- 4] Both the trial Court and the Appellate Courts have

recorded the concurrent finding of fact that the appellant has proved his possession over the suit land and therefore, the appellate Court has dismissed the Cross Objection filed by the respondent, challenging relief of injunction granted by the trial Court. However, both the Courts have come to the conclusion that there is absolutely no evidence on record to show that the possession of the appellant over the suit land, was to the knowledge of original owner Hari Shiva Katare and it was hostile. The appellant has even failed to show when his possession became hostile to the possession of original owner. The entire reliance is placed by the appellant, on the admission given by defendant Vinayak Shiva Katare before the Tahsildar that original plaintiff was in possession of the suit land for 40 to 50 years. However, the law is well settled that mere long standing possession cannot become adverse, unless it satisfies the requirement of law of it being open and hostile to the knowledge of the original owner.

5] Here in the case, there is absolutely no evidence produced on record to that effect and hence in the finding of fact recorded by both the Courts below, no fault can be found. Both the trial Court and Appellate Court have rightly held that the appellant has failed to prove that he has become owner by way of adverse possession and to that extent only the suit of the appellant is dismissed. However, as

regards the relief of injunction, both the Courts have rightly considered that the appellant is in possession of the suit land and hence respondents are restrained from causing obstruction to his possession without due process of law.

6]           The Second Appeal raises no substantial question of law. Hence Second Appeal stands dismissed.

**[DR.SHALINI PHANSALKAR-JOSHI, J.]**