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

**SECOND APPEAL NO. 260 OF 2016
WITH
CIVIL APPLICATION NO. 480 OF 2016
IN
SECOND APPEAL NO. 260 OF 2016**

Savitri Naraindas Tekchandani ..Appellant

vs.

Jaipal Gokuldas Tikiomal & ors. ..Respondents

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Shri Drupad S. Patil for appellant.

Shri A.R. Patil, AGP for State – respondent No.3.

Ms. Shivani S. Samel for respondent No.4.

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CORAM : M.S.KARNIK, J.

DATE : 10th JUNE, 2019

P.C. :

Heard learned Counsel.

2. It is the appellant's case (original plaintiff) that the decree which was earlier passed by the trial Court in Regular Civil Suit No.852 of 1978 was without jurisdiction and obtained by fraud. It appears that father of respondent No.1 (defendant No.1) was allotted a plot of land under the Displaced Persons

and Rehabilitation Act, 1954('the said Act of 1954' for short). The appellant/plaintiff was in actual possession of the said plot. Regular Civil Suit No.852 of 1978 was filed by the father of the defendant No.1 claiming title over the said plot and for possession. In the said suit, the appellant took a stand that he has become owner by adverse possession. The suit, however, was decreed in favour of father of the present defendant No.1. Even the appeal filed by the appellant came to be dismissed. The suit was decreed on 26th September, 1985. The Appeal No. 330 of 1985 filed before the Appellate Court and Second Appeal No. 235 of 1987 filed in this court also came to be dismissed . Thus, the decree in Regular Civil Suit No.852 of 1978 came to be confirmed and attained finality. The execution proceedings in respect of the decree passed in Regular Civil Suit No.852 of 1978 is pending.

3. The appellant / original plaintiff filed Regular Civil Suit No. 1437 of 2012 (in respect of which the present Appeal arises) for declaration that the decree obtained by respondent

Nos. 1 and 2 in Regular Civil Suit No.852 of 1978 is without jurisdiction and obtained by fraud. The Court's below after going through the materials on record came to the conclusion that the said decree is not vitiated by fraud or that the decree is not without jurisdiction. The trial Court took into consideration that defendant No.3 who is the authority competent allotted the plot in question under the said Act of 1954 to the respondent Nos. 1 and 2 as per letter dated 24/10/1968 and 28/3/1969. The issue whether the Court has jurisdiction or not to entertain the suit was also decided by the trial Court in Regular Civil Suit No.852 of 1978 . The trial Court held that the Civil Court has jurisdiction to entertain the suit. This finding of the trial Court has attained finality. It is thus apparent that the appellant only wants to reopen the issue which has attained finality which cannot be permitted.

4. Even in so far as the decree being vitiated by fraud is concerned, it is the appellant who had taken defence in Regular Civil Suit No.852 of 1978 that they are the owners by adverse

possession. The allotment in favour of the present respondent Nos. 1 and 2 was not disputed then.

5. Having taken a stand that the appellants have become owners by adverse possession which plea is decided against the appellant right upto this Court in a proceeding filed by the allottees, now it is not open for the appellant to contend that the decree is vitiated by fraud on the new ground raised that there was no order of allotment in favour of the respondents in respect of the plot in question.

6. Learned Counsel for the appellants would rely upon certain documents especially the one at page 45 of the compilation which he has tendered today in respect of an allotment dated 12th January, 1970 to indicate that some other plot was allotted to respondent Nos. 1 and 2 and not the plot which respondent Nos. 1 and 2 claimed in the earlier suit filed by them. In my opinion, no reliance can be placed on these documents at this stage and that too when it was their own case

that the appellants have become owners by adverse possession, it is now not open for the appellants to challenge the allotment at this belated stage.

7. For the reasons mentioned by the Courts below and in view of the concurrent findings recorded, I find no reason to interfere with the findings recorded. In my opinion, no substantial question of law arises for consideration in this Appeal. The Second Appeal is dismissed.

8. In view of the disposal of the Second Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of accordingly.

(M.S.KARNIK, J.)