

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

**SECOND APPEAL NO. 167 OF 2018
WITH
CIVIL APPLICATION NO. 400 OF 2018**

Gajanan Govind Patil and others	... Appellants
Versus	
Ajit Yashwant Todankar and others	... Respondents
.....	
Mr. M. A. Patil for the Appellants.	
Mr. Saurabh Oka for Respondent No.1.	
.....	

**CORAM : SANDEEP K. SHINDE, J.
DATE : 21st JANUARY, 2019.**

P. C.:

1. Heard learned Counsel for the parties.
2. This Second Appeal is preferred by the defendant against the Regular Civil Suit No. 98 of 2001 whereby defendant Nos. 1 to 3 and 10 were directed to demolish House No.715 and any other construction standing on the suit property Gat No.1028 at their own cost within three months from the date of the order and to hand over the vacant and peaceful possession to the plaintiff. This decree was confirmed in Regular Civil Appeal No. 109 of 2012. It is against this judgment and decree the Second Appeal is preferred by the defendants.

3. The plaintiff had filed the suit for possession and for decree seeking demolition of construction made on the suit property. The suit was resisted by the defendants and claimed possession as tenants therein, on the basis of award passed by the Revenue Authorities. The defendants claimed possession in the suit land since 1963, through her deceased mother Radhabai. Besides defendants had filed the counter claim and raised the plea of the adverse possession.

4. The Courts below rejected the plea of adverse possession raised by the defendants.

5. I have gone through the judgments of both the Courts below.

6. It may be stated that the defendants did not produce any evidence to substantiate their tenancy in the suit land. The defendants did not produce any award passed by the Revenue Authorities in support their contention of the tenancy. They had produced 7/12 extracts for the period 1976-77 to 1988-89 and 1990, which show the names of the plaintiffs' father and Uncle in the cultivation column. Relying on this extracts the learned Counsel for the appellant submitted that since the plaintiffs' father and Uncle's name was recorded in the cultivation column since 1976-77 and 1989, that itself was

sufficient to hold that they were possessing the suit land adverse to the interest of the original owners openly and with their express knowledge for more than twelve years. It may be stated, at the first place the defendant resisted the suit on the basis of tenancy. The trial Court as well as First Appellate Court upon appreciating evidence recorded finding of fact that defendants could not prove either their tenancy nor their possession was adverse and uninterrupted with express knowledge of the plaintiffs for more than twelve years.

7. The whole contention of the appellant is that though the evidence was produced by the defendants in support of their case, the same was not appreciated by the Courts below. It is also contended that the findings recorded by the Courts below was contrary to the evidence brought on record by the defendants.

8. I have gone through the evidence. In my view the findings recorded by the Courts below is consistent with the evidence on record. In fact, the evidence of DW6 who is Grampanchayat Sevak and evidence of DW5 who is Sub-Engineer with the M.S.E.B. clearly shows that the defendants had carried out the construction on the suit land in the year 1995 and sought electricity connection in the year 2001.

9. Thus, considering the facts of the case, in my view the appeal does not give rise any substantial question of law. The appeal is dismissed. The civil application does not survive and the same is disposed of.

(SANDEEP K. SHINDE, J.)