

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

**SECOND APPEAL NO. 14 OF 2018
WITH
CIVIL APPLICATION NO. 1235 OF 2017**

Balu Shankar Pawar and another ... Appellants
Versus
Kamlabai Vishvanath Pawar and another ... Respondents

**WITH
SECOND APPEAL STAMP NO. 21422 OF 2017**

Balu Shankar Pawar and another ... Appellants
Versus
Kamlabai Vishwanath Pawar and another ... Respondents

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Mr. N. M. Pujari i/b Mr. P. N. Joshi for the Appellants/Applicants.
Mr. Vikram Walawalkar i/b S. M. Sabrad for Respondents.
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**CORAM : SANDEEP K. SHINDE, J.
DATE : 14th JANUARY, 2019.**

P. C.:

1. The Second Appeal No. 14 of 2018 is preferred by the defendants in Regular Civil Suit No. 125 of 2000. The suit was for possession. The suit was resisted by the appellant-defendant by raising the plea of adverse possession. The suit was decreed by the trial Court in December, 2003. The decree was challenged in the First Appeal by the defendant, however, the Appellate Court confirmed the decree of the trial Court by judgment dated 21st

September, 2015, against this judgment the defendant has preferred this appeal.

2. The Second Appeal Stamp No. 21422 of 2017 is preferred by the original plaintiff who had filed the Regular Civil Suit No. 99 of 2000 for declaration that he became the owner of land Gat No.734 to the extent 26R by adverse possession. The suit was dismissed and the decree of trial Court was confirmed by the Appellate Court by judgment dated 6th October, 2015. It is against this judgment the Second Appeal Stamp No. 21422 of 2017 is preferred.

3. In both the appeals the suit property is one and the same i.e. 26R of land Gat No.734.

4. Heard learned Counsel for the parties. Perused the judgments of the trial Court as well as the Appellate Court.

5. Learned Counsel would submit that the evidence of the T.I.L.R. who had measured the land has not been properly appreciated and therefore the Court ought to have appointed the Court Commissioner to resolve the controversy. In support of this submission, he has relied on the judgment of this Court in Vasant Tukaram Prabhu Vs. Xalinibai Borcar alias Shalinibai Borkar (expired) Rep. By her L.R's and another - 2014(5) Mh.L.J. 382.

6. I have gone through the cited judgment wherein it appears the original plaintiff had failed to identify the suit land and in view of this fact the learned Single Judge of this Court remanded the suit and directed to appoint Court Commissioner in exercise of power under Order 26 Rule 9 of the Code of Civil Procedure.

7. That, after going through the evidence of the T.I.L.R. who had measured the suit land, in my view the findings recorded by the Courts below cannot be faulted with. In the suit for declaration filed by the appellant, both the Courts have held the plea of adverse possession has not been proved by the appellant. The appeals do not give rise to any substantial questions of law. Hence, both the appeals are dismissed. Civil Application No. 1235 of 2017 does not survive and the same is disposed of.

8. At this point of time the learned Counsel for the appellants seeks continuation of the stay granted by this Court for a period of four weeks. However, considering the facts of the case, I am not inclined to continue the stay. The request is accordingly rejected.

(SANDEEP K. SHINDE, J.)

