

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL (ST) NO. 27184 OF 2018****ALONGWITH****CIVIL APPLICATION NO. 1141 OF 2019****IN****SECOND APPEAL (ST) NO. 27184 OF 2018****ALONGWITH****CIVIL APPLICATION NO. 1142 OF 2019****IN****SECOND APPEAL (ST) NO. 27184 OF 2018**

**Hari Keru Shilewant (deceased)
through his legal heirs
Vimal Rajaram Shilewant & Ors.**

..... Appellants**VERSUS**

**Shamrao Bhau Shilewant (deceased)
Through his legal heirs
Anusaya Shamrao Shilewant & Ors.**

..... Respondents

Mr.Sachin A. Bhaskar for the Appellants.

None for the Respondents.

CORAM : R.D. DHANUKA, J.

DATE : 27th AUGUST, 2019

P.C.

Learned counsel for the appellants states that the executing court has not granted adjournment in the Regular Execution Petition No.1 of 2019 filed by the respondents. I have therefore heard this appeal. Civil application for condonation of delay is allowed.

2. By this appeal, the appellants (original defendants) have impugned the judgment and decree dated 21st April, 2018 passed by the Extra Joint District Judge, Karad in Regular Civil Appeal No.75 of 2009 confirming the judgment and decree passed by the learned Joint Civil Judge, Junior Division, Karad in Regular Civil Suit No.457 of

2006. The respondents (original plaintiffs) had filed a suit in respect of the land admeasuring 26R out of the land bearing Gut No.404 admeasuring 49 R situated at village Shirgaon, Taluka Karad District Satara for removal of the encroachment, possession and mesne profit. The plaintiff nos.1 and 2 had one half share title and possession of the suit land. The suit was resisted by the defendants by filing a written statement. The learned trial judge framed six issues for determination. The defendants had claimed the title of the suit land in their favour by adverse possession after completion of the consolidation scheme.

3. After considering the oral and documentary evidence, the learned trial court rendered a finding that the plaintiffs had proved their title in respect of the suit land. The defendants had failed to prove that the alleged title was perfected by the adverse possession in respect of the suit land. The learned trial judge also rendered a finding that the plaintiffs had proved that the defendant had committed encroachment towards the western direction to the extent of 26R in the suit land and accordingly held that the plaintiffs were entitled to possession and mesne profit.

4. The first appellate court formulated seven points for determination and after considering oral and documentary evidence, independently has held that the plaintiffs had proved their title to the suit property and that the defendants had not perfected their title in the suit property by adverse possession.

5. Learned counsel for the appellant (original defendants) could not point out any perversity in the findings rendered by the two courts below. The findings rendered by the two courts below being not

perverse, cannot be interfered with by this court in this second appeal filed under section 100 of the Code of Civil Procedure, 1908. In my view, no substantial question of law arises in this second appeal. Second appeal is devoid of merit and is accordingly dismissed. In view of the dismissal of the second appeal, the Civil Application for stay do not survive and is accordingly dismissed. No order as to costs.

[R.D.DHANUKA, J.]