

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.412 OF 2016

SOPAN PHUKA KALE LRS INDIBAI LRS PRAKASH AND OTHERS
VERSUS
SHALIGRAM RAMDAS KALE AND OTHERS

...
Advocate for Appellants : Mr. B.R. Waramaa
Advocate for Respondent Nos.5 and 6B: Mr. S.B. Yawalkar
...

CORAM : MANGESH S. PATIL, J.

DATE : 25.03.2022

PER COURT :

Heard the learned advocate Mr. Warama for the appellants. The appellants are the legal heirs of the original plaintiff who failed to obtain a decree for perpetual injunction simplicitor before the trial court and whose appeal has been dismissed by the judgment and order under challenge.

2. The appellant's predecessor claimed to be the owner in exclusive possession of the suit property and complained of the respondents having obstructed his peaceful possession over it. Some of the respondents contested the suit. They denied his ownership and possession.

3. Though initially he tried to record his testimony and filed an affidavit in lieu of his examination-in-chief but he did not turn up to face cross-examination. In his place his son filed the affidavit in lieu of his examination-in-chief and during cross-examination he specifically admitted that the suit property was divided in 24 plots in the year 1990 out of which

most of the plots were sold out and people constructed houses thereon. He also admitted that even in the Suit Property No.2 the plots were laid and subsequently his father sold that property to Sau. Sakharwala who thereafter sold it to one Jaheda Hussain.

4. After going through the revenue record and the quality of testimony the trial court dismissed the suit and the decree has been confirmed by the lower appellate court by concurring with the observation and finding of the trial court.

5. Since this is a second appeal, unless a substantial question of law arises this Court cannot undertake a fresh scrutiny of facts over which both the lower courts have concurred. As laid down in the case of **Narayanan Rajendran and Ors. Vs. Lekshmy Sarojini and Ors.; (2009) 5 SCC 264** in the absence of any substantial question of law arising in the matter in hand, it is liable to be dismissed.

6. The Second Appeal is dismissed with costs.

(MANGESH S. PATIL, J.)