

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

**SECOND APPEAL NO.338 OF 2022
WITH
INTERIM APPLICATION NO.2456 OF 2022**

Sudhir Arun Hardas & Ors.	..Appellants
Versus	
Ananda Dnyandeo Lipare & Ors.	..Respondents

Mr. Kalpesh U. Patil, for the Appellants.
Mr. P. B. Gujar, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 20th OCTOBER, 2022

PC.

1. Based on title Exhs.104 and 106, respondent/plaintiff initiated suit for declaration of ownership and possession vide RCS No.34 of 1992 which was decreed on 2nd May, 2017. The said decree was confirmed in RCA No.73 of 2017. As such, this Second Appeal.

2. Counsel for the appellants/defendants, Mr. Kalpesh Patil would urge that the respondent/plaintiff has come out with a plea in earlier suits for simplicitor injunction which were preferred way back in 1989 and 1991 i.e. RCS No.470 of 1989 and RCS No.317 of 1991. He would urge that in the said suit the plea of settled possession based on the aforesaid title was raised, however, while

answering the issue No.2, the Court has recorded that the respondent/plaintiff has given admission about possession of the appellants/defendants since 1963. As such, according to him, not only the appellants/defendants have perfected their title by way of adverse possession, but also the plea for declaration and possession is barred by limitation, as the suit was brought into action after beyond the period of limitation.

3. He would urge that the findings as such recorded that the Article 65 of the Limitation Act is attracted is contrary to the legal provisions.

4. Mr. P B. Gujar would support the judgments impugned.

5. The fact remains that the appellants/defendants before the Trial Court have never raised an issue of perfecting their title by way of adverse possession and it is only for the first time sought to be raised before the Appellate Court that too in absence of any pleadings and evidence to that effect.

6. The fact remains that the respondent/plaintiff has purchased the property in 1982 and 1987 vide sale-deeds Exhs.104 and 106. Even if the claim put forth by Mr. Kalpesh Patil that the respondent/plaintiff has admitted possession of the appellants/defendants since 1963, the fact remains that the cause of action narrated in the suit is based on the denial of title by the

appellants of respondent/plaintiff which was raised for the first time in 1991.

7. In that view of the matter, rightly so the provisions of Article 65 of the Limitation Act were attracted, as the limitation commences from the date of denial of title.

8. The fact remains that the respondent has established his title to the suit property.

9. In this background, having regard to the concurrent findings of fact recorded by both the Courts below and for the reasons recorded hereinabove, I hardly see involvement of any substantial question of law in the present appeal.

10. The appeal as such stands rejected.

11. In view of rejection of appeal, pending interim application also stands disposed of.

[NITIN W. SAMBRE, J.]