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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 6438 OF 2021**

SHRIMATI SHAKUNTALA PANDURANG
SHINDE

....PETITIONER

V/s.

SHRI. SADASHIV MAHADEV
SHINDE DECD THROUGH LRS AND ORS

.....RESPONDENTS

Mr. Sandip S. Koregave Advocate for the Petitioner

Mr. S. S. Patwardhan a/w Mr. Chetan G. Patil Advocate for
Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 21, 2022.

P.C.:

1) In defence to Suit being R.C.S. No. 1145/2000 for possession based on title, Defendant set up a plea of perfecting title by way of adverse possession.

2) In earlier round of litigation in relation to very same property, in Second Appeal preferred by the present Respondent-Defendant to the said Suit being Second Appeal No. 618/1997, this Court has made following observations.

“12. If the defendants file a suit on the basis of title, it will be open for the plaintiffs herein to claim adverse possession and it will be for the Court to decide the same

before whom the suit will be filed. It is pointed out that the defendants herein have already filed Special Civil Suit No. 129/1990 which is re-numbered as Regular Civil Suit No. 1145/2000 and is pending before the Civil Judge, J.D. Kolhapur. It will be for the Civil Judge, J.D., Kolhapur to decide in the said suit whether the possession of the plaintiffs has become adverse or not. The finding recorded by the first appellate Court to the extent that possession of the plaintiffs is adverse to the defendants will have to be set aside as the said finding was not relevant in this suit and as the suit for ownership on the basis of adverse possession was not maintainable. Accordingly, the appeal is partly allowed. Hence the order.

- i) Accordingly, the appeal is partly allowed;
- ii) The judgment and decree in Regular Civil Appeal No.95/1990 decided by the Additional District Judge, Kolhapur on March 12, 1997 is hereby quashed and set aside and the claim of declaration that the plaintiffs have become owners of the suit property by adverse possession is dismissed as not maintainable. The right of the plaintiffs to raise the issue in any other title suit filed by the defendants is kept open;
- iii) The finding of the learned Additional District Judge, Kolhapur that the possession of the plaintiffs was adverse to the defendants is also set aside and it is kept open for decision in a suit filed by the present defendants.
- iv) The decree for perpetual injunction is modified and the

defendants are restrained by perpetual injunction from disturbing the possession of the plaintiffs, except in accordance with due process of law;

v) In the light of the above facts, the parties shall bear their own costs throughout;

The decree be drawn accordingly;

vi) The stay order, if any, regarding the said suit shall stand vacated.”

3) Based on the same, Petitioner-Defendant to the aforesaid Suit moved an Application for amendment through Exh. 73 which is rejected vide impugned order dated 23/01/2020.

4) Though Mr. Patwardhan has contended that order impugned is just and proper having regard to defence set up by the Petitioner in the written statement, I am of the considered view that in view of Judgment of this Court delivered in Second Appeal No. 618/1997 and the law laid down by the Apex Court in the matter of **Ravinder Kaur Grewal and Others V/s. Manjit Kaur and others**¹, Petitioner-Defendant was justified in setting up the plea of perfecting title by way of adverse possession.

5) As such, the Court below in my opinion has committed an error

¹ (2019) 8 Supreme Court Cases 729

in rejecting Application Exh. 73.

6) As such, order impugned passed below Exh. 73 on 23/01/2020 in R.C.S. No. 1145/2000 pending on the file of 6th Jt. Civil Judge Senior Division, Kolhapur is hereby quashed and set aside. Application Exh. 73 stands allowed. Amendment to be carried out within 4 weeks from today, failing which the Court shall proceed with the Suit as if order impugned governs the proceedings.

7) Needless to clarify that the contention of Respondent-Plaintiff that Petitioner has come out with a contradictory plea and in such a situation, Petitioner has established his claim of perfecting title by adverse possession be decided on its own merits.

8) Considering the pendency of the Suit for more than 10 years, hearing of the same is expedited. I am informed that examination-in-chief of the Respondent-Plaintiff is already placed on record.

9) In that view of the matter, the Trial Court shall make every endeavour to decide the Suit within period of 9 months from today.

10) Petition stands allowed in above terms.

[NITIN W. SAMBRE, J.]