

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

**SECOND APPEAL NO.555 OF 2022
ALONG WITH
INTERIM APPLICATION NO.16846 OF 2022**

Shri. Rajendra Balkrishna Patil & Ors.	..Appellants
Versus	
Shri. Krishnath Ramu Patil	..Respondent

Mr. Dheeraj Patil, for the Appellants.
Mr. Pandit Kasar i/by Tejas Hilage, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 10th OCTOBER, 2022

PC.

1. Regular Civil Suit No.62 of 2016 came to be initiated by the respondent No.1 plaintiff on the file Civil Judge, Junior Division, Ajara, District Kolhapur, with prayers for redemption of mortgagee mesne profits and recovery of possession. The said suit was decreed vide judgment and order dated 3rd April, 2019.

2. Feeling aggrieved appellant preferred an appeal under section 96 of the CPC being Regular Civil Appeal No.18 of 2019 on the file of District Judge, Gadhinglaj, district Kolhapur. The appeal was dismissed vide judgment and order dated 6th May, 2022. As such, this second appeal.

3. Counsel for the appellants would urge that the issue

pertaining to the execution of a mortgage-deed dated 12th June, 1998 is incorrectly answered in farour of the respondent. According to him, both the courts below have failed to consider the recitals in the said document i.e. Exhibit-23 mortgage-deed. He would further urge that even if the claim for the mortgage as has been put forth by the respondent/plaintiff was considered, both the courts below have failed to appreciate the fact that such mortgage was without proper permission from the competent authority as contemplated under section 43 of the Maharashtra Tenancy And Agricultural Lands Act.

4. In addition, his contentions are, the appellant remained in uninterrupted possession of the suit property for a period of more than 12 years i.e. from the date of the execution of alleged mortgage-deed Exhibit-23. He would urge that the courts below ought to have recorded finding fact of possession by way of adverse possession in favour of the appellant.

5. The counsel for the respondent would oppose the prayer as according to him, apart from concurrent findings recorded by both the courts below, the document Exhibit-23 was duly proved as issue No.1. viz “1. Whether the plaintiff proves that he has executed usufructury mortgage in favour of defendant on 12.06.1998 for the period of 1998-1999 to 2012-2013 by receiving Rs.50,000/- from defendants?” is answered in the affirmative by the Trial Court.

6. He would urge that once the theory of the respondent No.1 plaintiff for grant of decree is based on the existence of mortgage-deed, the plea of adverse possession is rightly answered against the appellant.

7. I have appreciated the said submissions.

8. The fact remains that both the courts below after having considered oral and documentary evidence in the backdrop of pleading of rival parties, have recorded a specific finding that the document Exhibit-23 was duly proved by the plaintiff. Appellant herein has failed to demonstrate any infirmity in the said findings. Once the Courts below have recorded a finding that there exists mortgage-deed with the clause of reversal of the title the finding recorded based on the said document have rightly prompted the courts below to decree the suit.

9. Apart from above, the fact remains that the courts below have dealt with an issue as regards the adverse possession of the present appellant/defendant. Based on the mortgage-deed Exhibit-23, fact remains that the plea of adverse possession cannot be appreciated in favour of the appellant. Defendant No.1 appellant continued in possession of the suit property by virtue of the Exhibit-23 and mortgage-deed. As such, the very ingredients of plea of adverse possession cannot be inferred to the benefit of the present

appellant. Both the courts below have concurrently held that the respondent/plaintiff has established his case of the mortgage and decreed the suit.

10. In this background, the present appeal sans any question of law. As such, Second Appeal fails, stands dismissed.

11. Application also pending stands dismissed of.

[NITIN W. SAMBRE, J.]