

Dusane

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

**SECOND APPEAL NO.728 OF 2022
WITH
INTERIM APPLICATION NO. 20036 OF 2022**

Shri. Kumar Bhupal Malagave ...Appellant

V/s.

Shri. Sagar Appa Malagave ...Respondent

Mr. Ajit M. Savagave for Appellant/Applicant.

Mr. Nagesh Y. Chavan for Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATE: 24th NOVEMBER, 2022

P.C.:

1. Heard Mr. Savagave, learned Advocate appearing for Appellant and Mr. Chavan, learned Advocate appearing for Respondent.

2. By way of this Second Appeal, Appellant is challenging the legality and validity of the judgment and decree dated 23rd August 2018 passed in Regular Civil Suit No.103 of 2012 as well as judgment and decree dated 5th August 2022 passed by the learned District Judge-1, Jaysingpur in Regular Civil Appeal No. 5 of 2019. The Respondent/Plaintiff has filed said suit for eviction.

Both the Courts below have concurrently held that the Respondent has proved the ownership of the suit property. The only contention raised by learned Advocate appearing for the Appellant is that the Appellant is in adverse possession of the suit property.

3. To substantiate this contention, he has relied on paragraph 7 of the written statement. In paragraph 7 of the written statement, the Appellant has come up with a case that the suit property was purchased by Respondent on 25th November 1991 and immediately the Appellant has raised an objection to the same and denied the ownership of Respondent. The Appellant has been extensively cross-examined on these aspects.

4. Both the Courts have concurrently held that for proving the adverse possession, Appellant has to accept that the Respondent is owner of the suit property and then he has to establish his adverse possession. Perusal of written statement shows that in fact the Appellant was denying that the Respondent is the owner of the suit property.

5. Both the Courts have concurrently held that the Appellant has failed to prove his claim of adverse possession. Hence, in this Second Appeal there is no substantial question of law involved.

6. Second Appeal is dismissed with no order as to cost.

7. In view of dismissal of the Second Appeal, nothing survives in the Interim Application and same is also disposed of.

(MADHAV J. JAMDAR, J.)

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