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

**SECOND APPEAL NO.104 OF 2018
WITH
CIVIL APPLICATION NO.234 OF 2018**

**ARJUN
VITTHAL
KUDHEKAR**

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Smt. Kurshid Haidar Ali Sheikh & Ors. ...Appellants
Versus
Shri. Abdul Kadir Abubakar Sheikh & Ors. ...Respondents

Mr. Shivraj R. Patil, for the Appellants.

Mrs. Swati D. Sawant, for the Respondents.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 9th DECEMBER 2022**

P.C. :

1. Heard Mr. Shivraj Patil, learned counsel appearing for the Appellants and Mrs. Swati Sawant, learned counsel appearing for Respondent Nos. 1 to 6.
2. Both the Courts have concurrently held that the Appellants have failed to prove the ownership of the suit property. As far as the possession of the suit property is concerned, the learned Trial Court has recorded the finding that Appellants are in possession of the suit property. The learned Appellate Court reversed the finding regarding

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possession. The learned Appellate Court has held that except the oral evidence of the Plaintiff from the date of purchase of the land they were in possession of 30X50 of the land of Plaintiff. Appellate Court has relied on the judgment of the Plaintiff witness to the effect that suit land 30X50 is still lying as on date of purchase i.e. from the year 1973. The Appellate Court on the basis of this admission has held that therefore, Plaintiffs' case that Plaintiffs have constructed temporary tin shade is not proved. The evidence on record of the Plaintiffs' witness were PW 1 has admitted that for the first time in the year 2013 they have ascertained their rights over the suit property. The Plaintiff's witness also admitted that he could not give the exact year when Abubakar i.e. father of the present Respondent left the ancestral house No.86 which is at the distance of 200-300 feet from the present suit property. Thus, it is clear that the Plaintiffs' witness himself admitted that said Abubakar left the ancestral house No.86 and shifted to the suit property. The Plaintiffs' witness has accepted that portion of suit property is used as road by the villagers and that the possession of suit land except the house, is as it is. It is since

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the purchase of the said land. Admittedly, the property is purchased by said Abubakar and Courts below have concurrently held that said Abubakar is the absolute owner of the said property. Hence, there is no substantial question of law in the Second Appeal.

3. The Second Appeal is dismissed with no order as to costs.

4. In view of the dismissal of the Second Appeal, nothing survives in the Civil Application and the same is disposed of as such.

[MADHAV J. JAMDAR, J.]