

Arjun

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

SECOND APPEAL NO.205 OF 2014

Baburao Dattatraya Bhui & Anr. ...Appellants

V/s.

Shantinath Bapu Gath ...Respondent

**WITH
CIVIL APPLICATION NO.540 OF 2014
IN
SECOND APPEAL NO.205 OF 2014**

Baburao Dattatraya Bhui & Anr. ...Applicants

V/s.

Shantinath Bapu Gath ...Respondent

Mr. Manoj A. Patil, for the Appellants/Applicants.

Mr. Surel S. Shah, for the Respondent.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 9th MARCH, 2023**

P.C.:

1. Heard Mr. Patil, learned counsel appearing for the Appellants and Mr. Shah, learned counsel appearing for the Respondent.

2. A learned Single Judge by order dated 21st February, 2019 has admitted the Second Appeal on the following substantial question of law :

“Whether the lower appellate Court was right in law in granting the counter claim of the respondent-defendant i.e. became the owner by adverse possession in absence of the prayer in the counter claim and also in view of the fact, no issue was framed by the trial Court?”

3. Both Mr. Patil, and Mr. Shah, learned counsel appearing for the Appellants and the Respondent submitted that as there is substance in the substantial question of law framed by this Court, the impugned judgment and decree of the learned First Appellate Court be quashed and set aside and the said Reg. Civil Appeal No.6 of 2010 be remanded back to the learned First Appellate Court. Both the learned counsel apart from the aforesaid substantial question of law submitted that, other contentions raised by respective parties are not considered by the learned First Appellate Court.

4. Perusal of the Written Statement-cum-Counter Claim filed by the present Respondent i.e. Defendant clearly shows that, there is no prayer made in the Written Statement-cum-Counter Claim that the Defendant has become the owner by adverse possession. It is further significant to note that, no

such issue was framed by the learned Trial Court. In fact, no detail contentions are also raised in the Written Statement-cum-Counter Claim regarding adverse possession. Therefore, it is clear that, the learned First Appellate Court has travelled beyond the pleadings of the parties and granted relief which has not been claimed. Therefore, the impugned judgment and decree of the learned First Appellate Court is quashed and set aside.

5. The said Reg. Civil Appeal No.6 of 2010 is restored to the file of learned District Judge, Jaysingpur at Jaysingpur.

6. Both the parties to appear before the concerned learned District Judge on 10th April, 2023 at 11:00 a.m. and to submit this order.

7. The learned District Judge to decide Reg. Civil Appeal No.6 of 2010 in accordance with law.

8. The learned District Judge is requested to dispose of the said Reg. Civil Appeal No.6 of 2010 expeditiously by taking into consideration the pendency of other Appeals till 31st December, 2023.

9. Till said Reg. Civil Appeal No.6 of 2010 is decided, the present Respondent i.e. Appellant in said Reg. Civil Appeal

No.6 of 2010 is restrained from creating third party interest with respect to the suit property.

10. It is clarified that, all the contentions of both the parties are expressly kept open.

11. The Second Appeal is disposed of in above terms with no order as to costs.

12. In view of the disposal of the Second Appeal, nothing survives in the Civil Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]