

VRJ

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

SECOND APPEAL NO.670 OF 2022

Tanaji Saibu Bodre & Ors. ... Appellants

V/s.

Tukaram Rau Bodre Since Deceased
Through Legal Heirs & Ors. ... Respondents

VAIBHAV
RAMESH
JADHAV
Digitally signed by
VAIBHAV RAMESH
JADHAV
Date: 2023.11.29
14:23:18 +0530

**WITH
INTERIM APPLICATION NO.19062 OF 2022
IN
SECOND APPEAL NO.670 OF 2022**

Tanaji Saibu Bodre & Ors. ... Applicants

V/s.

Tukaram Rau Bodre & Ors. ... Respondents

**WITH
SECOND APPEAL NO.671 OF 2022**

Tanaji Saibu Bodre & Ors. ... Appellants

V/s.

Vijay Shivling Mali & Ors. ... Respondents

**WITH
INTERIM APPLICATION NO.19064 OF 2022
IN
SECOND APPEAL NO.671 OF 2022**

Tanaji Saibu Bodre & Ors. ... Applicants

V/s.

Vijay Shivling Mali & Ors. ... Respondents

Mr. Abhinandan B. Vagyani i/by Mr. Pankaj Kandhari
and Ms. Deepa A. Vagyani for appellant/applicant.

Mr. Kuldeep U. Nikam for respondent Nos.3 and 4.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 28, 2023

P.C.:

1. Since both the second appeals arise out of common judgments delivered by the Courts below and the subject matter of appeals is same, both are being disposed of by common judgment.
2. For the sake of convenience, the status of the parties in suit for possession i.e. R.C.S. No.350 of 1990 is quoted.
3. The appellants are original defendants. The plaintiffs filed R.C.S. No.350 of 1990 seeking possession of suit properties based on title. According to the plaintiffs, suit properties Survey No.31 and 32 were owned by Hari Ramji Patil. The plaintiffs' predecessor i.e. Rau Rama Bodre purchased suit properties from Hari Ramji Patil in 1918. Rau Rama Bodre died in 1959. According to the plaintiffs, after the death of Rau Rama Bodre, the defendants got their names in revenue records and came in possession of the suit properties. According to the plaintiffs, they have become owners of the suit properties by succession. On 1st December 1991, plaintiff Nos.1 and 2 sold suit properties to plaintiff Nos.3 and 4. With the result, plaintiff Nos.3 and 4 become owner of the suit property.
4. The defendants (appellants) filed a written statement claiming ownership over the suit properties. According to the defendants, their predecessor (Saibu) was having ownership rights along with Rau Rama Bodre but Rau Rama Bodre was karta of joint family, his name continued in revenue records. The defendants further pleaded that they are in open possession of the

suit properties for more than seventy years and, therefore, have become owners by adverse possession.

5. The defendants (appellants) filed Regular Civil Suit No.1 of 1995 seeking injunction against the plaintiffs not to disturb their possession over the suit properties without following due process of law.

6. The Trial Court, by judgment and decree dated 18th February 2012, decreed Regular Civil Suit No.350 of 1990 directing delivery of possession of suit property in favour of the plaintiffs. Appellants' suit for injunction was partly decreed against Vijay and Vinayak restraining them from disturbing appellants' possession without following due process of law.

7. The appellants filed Regular Civil Appeal No.203 of 2012 and Regular Civil Appeal No.204 of 2012 challenging judgment and decree passed in Regular Civil Suit No.350 of 1990 and Regular Civil Suit No.1 of 1995. The Appellate Court, by the impugned judgment, dismissed both the appeals.

8. Learned advocate for the appellants submitted that there is no evidence on record to indicate that plaintiff Nos.1 and 2 are the heirs and legal representatives of original owner Rau Rama Bodre. According to him, the defendants are in possession for more than seventy years and, therefore, they are entitled to protect their possession based on concept of adverse possession.

9. I have considered the judgment and orders passed by the Courts below and the pleadings of the parties and evidence produced on record. The Courts below framed a specific issue as to

whether the plaintiffs proved that they are heirs and legal representatives of Rau Rama Bodre. The plaintiffs produced on record voters list (Exhibit-175) which indicates that at Serial No.819, name of plaintiff No.1 Tukaram has been mentioned as “Tukaram Rau Bodre”. Moreover, plaintiffs produced on record school leaving certificate which indicates plaintiff No.1’s name as “Tukaram Rau Bodre”. The date of birth is shown as 18th February 1924. The said school leaving certificate is duly proved through P.W.-3. Moreover, plaintiffs examined. Laxman Siddhappa (P.W.-6) who deposed that he has profession of maintaining genealogy. He deposed that as per his genealogy, plaintiffs’ father was Rau Rama Bodre. The Appellate Court based on voters list, school leaving certificate, genealogy and evidence of P.W.-3 recorded a finding that plaintiff Nos.1 and 2 are the heirs and legal representatives of Rau Rama Bodre. There is no serious dispute about the fact that Rau Rama Bodre purchased Survey No.31 and 32.

10. The defendants failed to adduce evidence to indicate that their predecessor-in-title was co-owner along with Rau Rama Bodre. Therefore, the finding of fact recorded by the Courts below that the plaintiffs are owners of the suit property is based on admissible evidence.

11. Once the plaintiffs prove their ownership over the suit property, it is for the defendants to prove their status to hold immovable property. To protect such possession, defendants tried to raise plea of adverse possession. On perusal of the pleadings, it appears that the plea raised by the defendants in the written statement is not sufficient to frame issue of adverse possession.

The necessary ingredients of adverse possession are not pleaded in the written statement. Moreover, the defendants in the earlier part of the written statement disputes the ownership of the plaintiffs and claims co-ownership of the property. The essential ingredients of adverse possession and the date or the period when the defendants' possession become hostile has not been pleaded or proved by the defendants. Therefore, the Courts below rightly decreed suit for possession of title.

12. In so far as the suit of the appellants for injunction restraining the respondents from disturbing possession of the suit property is concerned, since the plaintiffs have filed suit for possession, it amounts to due process of law and, therefore, the plaintiffs in R.C.S. No.350 of 1990 are entitled to possession of the suit property.

13. The finding of the plaintiffs ownership is based on admissible material, the defendants having failed to prove right to continue with possession, in my opinion, no substantial question of law involved.

14. The second appeals are dismissed. No costs.

15. In view of dismissal of the second appeals, the interim applications do not survive and the same stand disposed of.

16. The appellants are entitled to remain in possession for period of four weeks to enable them to approach Apex Court.

(AMIT BORKAR, J.)