



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 102 OF 2023
WITH CIVIL APPLICATION NO. 2633 OF 2023**

**RATIRAM VEDU KOLI AND OTHERS
VERSUS
JAYRAM KISAN WANKHEDE AND OTHERS**

Ms. Seema Gaikwad, Advocate h/f Mr. Ajay Talhar, Advocate for the appellants

**CORAM : R. M. JOSHI, J.
DATE : 16th FEBRUARY, 2024**

P.C. :-

1. This appeal takes exception to the judgment and decree passed in RCS No. 33 of 2003 whereby the suit was partly allowed granting injunction against defendants and refusing declaration as to the ownership of plaintiffs over the suit property. The said judgment and decree came to be unsuccessfully challenged in RCA No. 666 of 2014.
2. Parties are referred to by their nomenclature in suit.
3. The facts which led to the filing of present appeal can be narrated in short as under:
 - (i) Plaintiffs claim that the suit property was owned by the Vedu Koli and Ukhardu Koli. It is specific case of the plaintiffs that on the basis of the agreement to sale executed by the father of the defendants plaintiffs came in to the possession of suit property. On the basis of the same their

names are mutated in the record of rights by entry No. 1705 dated 07/01/1968. It is specifically pleaded that as per the agreement to sale the vendor has accepted entire amount of consideration but used to avoid the execution of sale deed in favour of the purchaser. There is further specific averment that the defendants are interfering in the dispute possession of the plaintiffs over the suit property.

(ii) Defendants appeared in the suit and by filing written statement at Exhibit 15 denied the claim/contentions of plaintiffs. It is the case of the defendants the suit is barred by limitation and also for want of joining necessary parties. It is the case of the defendants that the plaintiffs had not paid entire amount of consideration to the father of defendants as per the agreement to sale and also sale deed is not obtained in respect of suit property.

(iii) Learned Trial Court decreed the suit partly, since plaintiffs have succeeded in proving the possession over the suit property pursuant to the agreement to sale, injunction was granted against defendants from obstructing peaceful possession of the plaintiffs over the suit property without following due process of law. The Trial Court however, refused the declaration that the plaintiffs have become owner of the suit property *inter alia*, rejecting the plea of adverse possession. The said judgment came to be confirmed by the First Appellate Court. Hence this appeal.

4. Learned counsel for the plaintiffs submits that the Trial Court has

committed error in not considering the material evidence on record in its proper perspective. It is her contention that since the plaintiffs are in the possession of the suit property uninterruptedly since the year 1968, the both Courts below ought to have held the said possession adverse to the owner and the plaintiffs ought to have been declared owner by perfecting their title by adverse possession.

5. Admittedly, title in the suit property has not been transferred in favour of plaintiffs by execution of registered sale deed or any other valid mode of transfer. As far as claim of adverse possession is concerned, said contention of plaintiffs is contrary to the pleadings in the plaint. When the plaintiffs have come out with the specific case that pursuant to the agreement to sale they are put in to the possession of the suit property, such possession can never become adverse to the owner i.e. defendants. In such circumstances, this Court finds no perversity in the findings recorded by the Trial court that the plaintiffs have failed to prove ownership over the suit property and refused injunction to that effect. For want of substantial question of law, which is *sine qua non* for entertainment of second appeal, it deserves to be dismissed. Accordingly, appeal stands dismissed.

6. Pending civil application, if any, stands disposed of.

(R. M. JOSHI, J.)

ssp