

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 155 OF 2024

**ALONGWITH
INTERIM APPLICATION NO. 13703 OF 2023
AND
INTERIM APPLICATION NO. 13704 OF 2023**

Sachin Vitthal Adagale & Ors.

....APPELLANTS

V/S.

Anant Jaysingrao Khilare

....RESPONDENT

Mr. Manoj A. Patil *i/by. Mr. Ashish P. Pawar, for the Appellants.*

Mr. D.M. Gupte, *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 4 March 2024.

P.C. :

1) By this Appeal, the Appellants challenge the Judgment and Decree dated 10 October 2022 passed by the Ad-hoc District Judge-4, Pune in Regular Civil Appeal No. 374 of 2015. The first Appellate Court has dismissed the Appeal and has confirmed the Decree dated 29 April 2015 passed by the 4th Additional Judge, Small Causes Court and Joint Civil Judge Senior Division, Pune in Special Civil Suit No. 174 of 2012.

2) I have heard Mr. Patil, the learned counsel appearing for the Appellant and Mr. Gupte, the learned counsel appearing for the Respondent.

3) Plaintiff instituted Special Civil Suit No. 174 of 2012 for recovery of possession and for perpetual injunction. Appellants do not claim ownership in respect of the suit property. It is the case of the Appellants that they are in settled possession of the suit property since the year 1957. It appears that in previous round of litigation, Appellants claimed tenancy rights in respect of the suit property. However, the said contention of the Appellants has been negatived in the previous round of litigation. Thus, the capacity of the Appellants as possessor of the suit property would either be a gratuitous licensee or a trespasser. Plaintiff as owner of the suit property is entitled to recover possession thereof by following due process of law. The Plaintiff accordingly filed Suit seeking recovery of the suit property.

4) Mr. Patil would submit that the suit of the Plaintiff was barred by limitation as the suit property is occupied by the Appellants since the year 1956. However after considering the evidence on record, both Trial as well as the first Appellate Court have held that the shed in which the Appellants claim residence was demolished in the year 2005 by the Municipal Corporation and the same was reconstructed by the Appellants. The said finding recorded by the Trial and the first Appellate Court is well supported by evidence on record. Infact, Mr. Gupte is quick enough to add that in addition to demolition that took

placed in the year 2005, the structure was once again demolished in the year 2009. Be that as it may, the Appellants/Defendants were unable to prove before the Trial Court that their possession in the suit property was continuous since the year 1957. Even otherwise, it is a settled law that mere permissive user or trespasser cannot defend the suit filed by the Plaintiff for recovery of possession. Appellants/Defendants did not claim title in the suit property by raising a plea of adverse possession. Therefore, in my view the Appellants do not have any right to remain in possession of the suit property. No serious error can be traced in the approach adopted by the Trial and the first Appellate Court. No substantial question of law is involved in the Appeal. The Appeal is **rejected**.

5) With rejection of the Appeal, the Interim Applications do not survive. The same also stand disposed of.

SANDEEP V. MARNE, J.