



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**SECOND APPEAL NO. 369 OF 1996**

Sayyaji S/o Kishan, since deceased,  
through his heirs and legal representatives-

1. Ratan S/o Sayyaji  
(Since deceased)  
Through her L.Rs.
  - a) Sambai W/o Sayyaji, aged 71 years,  
occu. agriculture, R/o Dharmabad,  
Tq. Biloli, Dist. nanded.
  - b) Laxmibai w/o Ratan, aged 45 years,  
occ : agriculture and household,  
R/o Dharmabad, Tq. Biloli,  
Dist. Nanded.
  - c) Subhash S/o Ratan, aged 26 years,  
occu : agriculture, R/o Dharmabad,  
Tq. Biloli, Dist. Nanded.
  - d) Indu w/o Ananda Haujekar, age 24 years,  
occ : household, R/o Dharmabad,  
Tq. Biloli, District Nanded.
  - e) Babu s/o Ratan, aged 22 years,  
occu. agriculture, R/o Dharmabad,  
Tq. Biloli, Dist. Nanded.
  - f) Dhamsheela d/o Ratan, aged 12 years,  
minor, under guardianship of her  
mother No.1 (b) above.
2. Sidram S/o Sayyaji, aged 43 years,  
Occ. Agriculture, R/o Dharmabad,  
Tq. Biloli, Dist. Nanded.
3. Vasant S/o Sayyaji, aged 37 years,  
Occ. Agriculture, R/o Dharmabad,  
Tq. Biloli, Dist. Nanded.

4. Manohar S/o Sayyaji, aged 36 years,  
Occ. Agriculture, R/o Dharmabad,  
Tq. Biloli, Dist. Nanded.
  5. Uttam S/o Sayyaji, aged 34 years,  
Occ. Agriculture, R/o Dharmabad,  
Tq. Biloli, Dist. Nanded.
  6. Sambai W/o Sayaji, aged 69 years,  
Occ. Agriculture, R/o Dharmabad,  
Tq. Biloli, Dist. Nanded.
  7. Kashibai W/o Sayyaji, aged 49 years,  
Occ. Agriculture, R/o Dharmabad,  
Tq. Biloli, Dist. Nanded.
  8. Kamal W/o Eknath, aged 41 years,  
Occ. Household, R/o Purna,  
Tq. Basmath, Dist. Parbhani.  
(Transpose to Respondent No.3  
vide Addl. Registrar's order  
dated 12.06.96)
  9. Nilabai D/o Sayyaji, aged 26 years,  
Occ. Household, R/o Dharmabad,  
Tq. Biloli, Dist. Nanded.
  10. Yamunabai W/o Malhari, aged 33 years,  
Occ. Agriculture, R/o Nizambad,  
Dist. Nizambad (A.P.)
- ... APPELLANTS**  
(Heirs & L.Rs. of orig. Plaintiff)

### VERSUS

1. Shrikishan S/o Laxminarayan Mandhane,  
since deceased through his heirs and  
legal representatives :
- 1/1 Satyanarayan S/o Shrikishan Mandhane,  
aged 47 years, Occupatio Business,  
R/o Dharmabad, Tq. Biloli, Dist. Nanded.

- 1/2 Omprakash S/o Shrikishan Mandhane,  
aged 37 years, Occ. Business,  
R/o Dharmabad, Tq. Biloli, Dist. Nanded.
- 1/3 Narayandas S/o Shrikishan Mandhane,  
aged 34 years, Occ. Business, R/o  
Dharmabad, Tq. Biloli, Dist. Nanded.
- 1/4 Janabai W/o Shrikishan Mandhane,  
aged 62 years, Occ. Household,  
R/o Dharmabad, Tq. Biloli,  
Dist. Nanded.
- 1/5 Sitadevi Gilda, adult, Occ. Household,  
R/o Latur.
- 1/6 Kiran Somani, adult, Occ. Business,  
R/o Sailu, Dist. Parbhani.
2. Prayagjibhai Patel, aged 68 years,  
Occ. Business, R/o Dharmabad,  
Tq. Biloli, Dist. Nanded, presently at  
Sadhali group Co-operative Cotton  
Sale Ginning and Pressing Society Ltd.,  
at Sadhali, Tq. Sinnur, Dist. Baroda,  
Gujrath State.
3. Kamal W/o Eknath, Age : 41 years,  
Occ : Household, R/o Purna,  
Tq. Basmath, Dist. Parbhani.

..RESPONDENTS

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Sr. Adv. P. R. Katneshwarkar i/b Adv. V.S. Dhotare and Adv. A.A. Fulfagar,  
Advocate For Appellant Nos.1(b) and 1(f)  
Adv. H.H. Padalkar, Advocate for Respondent No. 1/2

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**CORAM** : **ROHIT W. JOSHI, J.**  
**RESERVED ON** : **20<sup>th</sup> MARCH, 2025**  
**PRONOUNCED ON:** **10<sup>th</sup> JUNE, 2025**

**JUDGMENT :**

1. The appellants in the present second appeal are legal representatives of original plaintiff. The plaintiff had filed suit, being Regular Civil Suit No.134 of 1979 for declaration that he had become owner of suit property, being land bearing survey no.208 admeasuring 1.19 HR situated at village Ratnali, Tq. Biloli, Dist. Nanded by way of adverse possession and for injunction restraining the defendants from disturbing his possession over the suit property.

2. It is case of the plaintiff that somewhere around the year 1958 and 1959, he had advanced a loan of Rs.10,000/- to defendant no.3. The plaintiff claimed that defendant nos.2 and 3 were partners and loan was obtained by defendant no.3 for both the partners. The plaintiff claimed that the loan was to be repaid within period of six months and because the loan was not so repaid, he entered the property forcibly on 01.04.1960 and started cultivating the same. The plaintiff thus claimed to be holding possession of the suit property adverse to the interest of the real owner from 01.05.1960 and contended that he had become owner by adverse possession w.e.f. 02.05.1972. According to the plaintiff, defendant no.2 was the owner of the suit property. It will be pertinent to state that defendant no.2 could not be served in the civil suit and suit came to be dismissed against defendant no.2 on that count.

3. The learned Trial Court framed issues in the matter and on recording evidence was pleased to dismiss the suit on 05.01.1985. The learned Trial Court has held that the plaintiff had failed to prove his case of adverse possession, however, the learned Trial Court has recorded findings with respect to possession over some portion of the suit property in favour of the plaintiff. In this regard, it will be pertinent to mention that there are constructed buildings, houses and huts standing on the suit property. The suit property has a barbed wire fencing with a gate. The learned Trial Court has held that the plaintiff had failed to prove possession over the constructed portion of the suit property, but was in possession of the open land in the suit property. It will be pertinent to mention that the Trial Court had appointed Commissioner for inspection of the suit property. The Commissioner report is at Exhibit-49. Perusal of the Commissioner report indicates that huts and houses were existing on the suit property. Some huts were constructed alone side Ratnali-Dharmabad road and some huts were construed alone eastern side portion. The main buildings appear to be centrally located.

4. Aggrieved by the said judgment and decree dismissing the suit, the legal representatives of deceased plaintiff preferred an appeal, being Regular Civil Appeal No.105/1985, which came to be renumbered

as Regular Civil Appeal No.5/1993. The appeal came to be dismissed vide judgment and decree dated 21.07.1995 passed by the learned Additional District Judge, Biloli. The learned First Appellate Court has held that the suit was rightly dismissed with respect to the declaration of ownership by adverse possession since according to the plaintiff, defendant no.2 was owner of the suit property and suit was dismissed against defendant no.2 on account of failure to effect service on him and as such, the relief of declaration could not be granted in the absence of defendant no.2. As regards physical possession also, the learned First Appellate Court has held that the plaintiff had failed to prove physical possession over part of the suit property i.e. portion of open land in the suit property.

5. Aggrieved by the said concurrent decrees, the present Second Appeal came to be preferred. The present Second Appeal came to be admitted vide order dated 08.08.1996, which reads as under :-

"There involves substantial question of law on the point of adverse possession."

6. Heard Shri P.R. Katneshwarkar, learned Senior Advocate for appellants. He has contended that the plaintiff had come up with a clear case that he had forcibly entered in the suit property and had started

cultivating the same from 01.05.1960. He contended that the plaintiff had proved his possession over the suit property by leading proper evidence including documentary evidence in the form of 7/12 extracts and tax receipts. He contended that the learned Trial Court had rightly held that the plaintiff had proved his possession over the suit property. The learned Senior Advocate contended that the learned First Appellate Court has erred in reversing the finding regarding possession of the suit property of the plaintiff. He further contended that in view of possession being proved, decree for declaration of ownership of adverse possession ought to have been passed in favour of the plaintiff. He further contended that even if declaration of ownership is not granted, relief of perpetual injunction against dispossession without following due process of law ought to have been granted.

7. Per contra, Shri H.H. Padalkar, learned Advocate for the respondents contended that both the Courts have rightly dismissed the suit with respect to prayer for declaration by adverse possession. He also contended that the learned First Appellate Court has recorded proper findings on the point of physical possession and has rightly reversed the findings recorded by the learned Trial Court as regards physical possession over the suit property.

8. The plaintiff has categorically stated in the plaint that suit property was owned by defendant no.2. The suit is admittedly dismissed against defendant no.2 on account of failure on the part of the plaintiff to effect service of suit summons on defendant no.2. Since the plaintiff prayed that he had become owner by adverse possession while defendant no.2 was the real owner, no fault can be found with respect to dismissal of his suit with respect to prayer for declaration of ownership by adverse possession.

9. As regards the alleged physical possession of the plaintiff, it needs to be mentioned that the appeal is admitted on the question of law on the point of adverse possession. However, learned Senior Advocate canvassed submissions on the findings regarding physical possession as well to contend that decree of perceptual injunction needs to be granted. Reliance is placed on 7/12 extracts to contend that the plaintiff was in possession of the suit property. The learned First Appellate Court has recorded that the entry regarding possession of plaintiff in 7/12 extracts was recorded as 'driver'. The learned First Appellate Court has held that this would imply that he was not in alleged possession in his individual right but as a driver of Ginning and Pressing Factory, which was operating in the suit property at one point of time. The learned First

Appellate Court has also observed that the plaintiff had failed to bring on record any independent evidence regarding cultivation of the land.

10.           7/12 extracts relied on by the plaintiff mention the word 'driver'. Since the plaintiff is relying on the said document, it was necessary for the plaintiff to explain the said circumstance. It was necessary for the plaintiff to explain why the word driver was appearing in the 7/12 extracts. However, there is no explanation in this regard by the side of plaintiff. It must be stated that if possession of a person is as a servant or agent of another, the possession cannot be regarded as individual possession so as to claim decree for perpetual injunction. A possession of servant is possession of his master and possession of agent is possession of the principal.

11.           Admittedly, there are building structures and huts constructed on the suit property. The suit property is fenced and has a gate installed for entrance. Even the findings by the learned Trial Court in favour of the plaintiff holding possession is only with respect to open portion in the suit property. The learned Trial Court has also held that the plaintiff has failed to prove his possession over constructed portion. A perusal of the cross-examination of the plaintiff's witness will

demonstrate that the plaintiff had failed to establish possession over constructed buildings and huts. Findings in this regard cannot be faulted.

12. As regards the open portion, the finding of the learned Trial Court is difficult to accept. Perusal of Commissioner's report indicates existence of several structures including huts. The structures situated in the middle portion of the land. The huts are constructed on the eastern side. Substantial portion of land is covered under the said huts on the eastern side. Likewise there are huts along the north-west boundary of the property. The property is fenced from all sides and also has a entrance gate. Open land is appurtenant to the buildings. It is obvious that the possession of land is with a person holding possession of the structures. Apart from this, learned First Appellate Court has rightly placed reliance on Commissioner's report to hold that the open portion of land was also not under cultivation. It is also necessary to state that Ginning and Pressing Factory was being operated from the suit property. In that view of the matter, the learned First Appellate Court has rightly disbelieved the case of plaintiff as regards physical possession.

13. The learned senior counsel for the appellants also contended that defendant no.1 had failed to prove his ownership over the suit property. It is argued that defendant no.1 claims to have purchased property from *Sadali* group, however, the sale deed in his favour was

executed by one Mr.Joshi acting as constituted attorney of *Sadali* group and the power of attorney was not proved. There is no need to go into said aspect since the plaintiff had failed to prove his possession over the suit property.

14. In view of the discussion above, substantial question of law framed in the appeal is answered against the appellants and in favour of the respondents. As regards the physical possession and decree for injunction in that regard no substantial question of law arises, as was sought to be canvassed by the appellants. Second Appeal is, therefore, dismissed with costs.

15. Civil Application, if any, stands disposed of.

**[ROHIT W. JOSHI]**  
**JUDGE**

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