



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

SECOND APPEAL NO. 144 OF 2023

Ishwar Shrirang Ware

.. Appellant

Versus

Parbhani City Municipal Corporation

.. Respondent

Shri Krushna S. Solanke, Advocate for the Appellant.

CORAM : SHAILESH P. BRAHME, J.

DATE : 18TH AUGUST, 2025.

FINAL ORDER :

. Heard learned counsel for the appellant. Being aggrieved by concurrent findings of facts recorded by Courts below dismissing the suit filed by the appellant for perpetual injunction, present second appeal is preferred.

2. Appellant claims to be owner of house No. 1236/2001 situated at Sy. No. 39 within municipal limits of Parbhani. One Mr. Eknath Kadam was the owner of Sy. No. 39 with whom appellant's parents and grand parents were rendering services. They were allotted 2000 square feet of land by Eknath Kadam by oral agreement. Preceding forty years of filing of suit appellant and his forefathers are in possession of the suit land. A construction was carried out in the suit land and electricity connection was also secured. A layout was sanctioned covering the suit land by the respondent – Corporation in the year 1997.

The construction and the occupation of the suit land is said to be illegal. The respondent – Corporation issued notice dated 15.07.2016, Exhibit 40 for handing over possession. Hence the appellant was required to file suit for perpetual injunction.

3. The suit is contested by the respondent on the basis that there is no title document. Appellant is occupying open space of sanctioned layout illegally. Payment of taxes or the electricity connection would not confer title on the appellant. Respondent justified its action taken against the appellant.

4. Both the Courts below held that appellant does not hold any title document. Payment of taxes or the electricity connection or continuous possession are not sufficient to confer title upon the appellant.

5. Learned counsel for the appellant submits that original owner did not dispute title of the appellant. In the record of rights name is mutated. There is electricity connection which indicates legal right of the appellant over the suit plot. It is submitted that by way of adverse possession, appellant can be said to have perfected the title. It is further submitted that behind back layout was sanctioned showing open space over the suit land.

6. I have gone through the impugned judgments passed by the Courts below. A concurrent findings of fact are recorded that

appellant or his predecessor in possession are not armed with any title document. The theory of transferring 2000 square feet of plot by oral agreement is unacceptable. Mere long standing possession or having electricity connection is not sufficient to infer title. Payment of taxes is also not decisive.

7. The layout of Sy. No. 39 has been sanctioned by the respondent in the year 1997. The suit plot is shown to be open space. The owner of the land did not disclose that suit plot was sold to appellant. In the absence of any title document no case is made out by the appellant. I do not find that any illegality or error of jurisdiction committed by the Courts below.

8. A plea of adverse possession which is sought to be argued for the first time in the High Court cannot be countenanced in the absence of pleadings and material on record. The respondent - statutory body is bound to proceed against the illegal occupation of the appellant. Second appeal sans merits. Second appeal is dismissed. There shall be no order as to costs.

[SHAILESH P. BRAHME J.]

bsb/Aug. 25