



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

SECOND APPEAL NO. 167 OF 2025
WITH
CIVIL APPLICATION NO. 4755 OF 2025

1. Shivraya s/o Siddappa
Age : 46 years, Occ: Agri.,
 2. Totkare Shivappa @ Siddappa s/o Hotalappa,
Age : 65 years, Occ: Agri.,
- Both R/o: Bamni (BK) Tq. Biloli Dist. Nanded. **.. Appellants**

Versus

1. Mohan Kondiba Wadikar
Age : 59 years, Occu.: Agri.,
 2. Shirish Kondiba Wadikar,
Age : 55 years, Occu.: Agri.,
- Both R/o: Bamni (BK) Tq. Biloli Dist. Nanded. **.. Respondents**

- * **Mr. Bhavthankar Vivek Vasantrao**
Advocate for the Appellants.
- * **Mr. Anil M. Gaikwad**
Advocate for the Respondents.

CORAM : SHAILESH P. BRAHME, J.

DATE : 3rd JULY 2025

FINAL ORDER :

1. Heard both sides.
2. Appellants who are original Defendants have suffered decree of declaration and possession by concurrent findings of facts. The substantial questions of law in ground no. E, H and M are pressed into service.

3. Respondents filed Regular Civil Suit No.82/2018 for declaration and possession. The suit land bearing Survey No.113/D was allotted to their father – Kondiba in a compromise decree dated 03.02.1959 passed in Regular Civil Suit No.38/1959. Kondiba died in 1975. It was transpired to the Respondent that Kondiba's name was deleted and instead of that name of Hotalappa and thereafter that of Appellant No.1 was inserted. They called upon the Appellants, seeking copy of sale deed. It was further revealed that Appellant No.2 sold suit land to the Appellant No.1 by sale deed dated 08.04.2013. Hence the suit was filed.

4. The defense of the Appellants was that Hotalappa was the maternal uncle of Appellant No.1 and he was issue less. Appellant No.2 was adopted by him on 10.02.1972. Kondiba - father of Respondents, sold suit land to Hotalappa. After death of Hotalappa, being adopted son, Appellant No.2 became owner. Thereafter he sold it to Appellant No.1 on 08.04.2013.

5. Both the Courts below held that suit was within limitation. Appellants failed to produce on record alleged sale deed executed by Kondiba in favour of Hotalappa. The suit land was allotted to Kondiba and thereafter it devolved upon the Respondents.

6. Learned Counsel for the Appellants Mr. Bhavthankar submits that Hotalappa was continuously in possession and therefore suit filed in 2018 is barred by limitation. In view of Section 27 of the Limitation Act, right of the Respondents is extinguished. It is further contended that considering Article 58 for the relief of declaration and Article 65 for

possession, suit is barred by time. It is further submitted that Respondent No.1 became major in 1964 and the Respondent No.2 in the year 1980 and therefore suit filed in 2018 is beyond time. The above submissions canvassed to make out substantial questions of law.

7. Per contra, learned Counsel Mr. Anil Gaikwad tenders on record application Exhibit-18 filed under Order 6 Rule 17 of the Code of Civil Procedure for incorporating plea of adverse possession in the Lower Appellate Court. The application was rejected which was confirmed up to the Apex Court. It is submitted that having failed in raising plea of adverse possession, it would not be open to agitate ground of limitation. It is submitted that there is absolutely nothing on record to infer as to when possession of the Appellants became adverse. It is submitted that no cause of action arose immediately after the Respondents becoming major. It arose when Respondents learnt that there is no mutation or the record of right to infer title of the Appellants and when notice reply dated 17.08.2017 was received from the Appellants. It is submitted that concurrent findings of facts need no interference.

8. I have considered rival submissions of the parties. There is no dispute that Respondent's father Kondiba was the owner of the suit land. It was allotted to him in a compromise decree of RCS No.38/1959. Kondiba's ownership was admitted by the Appellants. The theory of the Appellants that Kondiba had sold the suit land to Hotalappa has absolutely not been corroborated. Neither details of

sale transactions, nor copy of sale deed is placed on record. The finding recorded by the trial Court in paragraph nos.14 to 18 which is further confirmed by the Appellate Court cannot be faulted. Whole edifice of defense gets collapsed. Consequentially sale deed executed by Appellant No.2 in favour of Appellant No.1 on 08.04.2013 becomes void and inconsequential. I do not find that there is any perversity or illegality in the findings of declaration recorded by both the Courts below.

9. Entire thrust of the submission of the Counsel for the Appellants is on the limitation. No specific plea of adverse possession was raised in the written statement and in the trial Court. Application Exhibit-18 to incorporate plea of adverse possession was rejected when matter was before Lower Appellate Court vide order dated 07.11.2022. High Court confirmed it in Writ Petition No.2340/2023 vide order dated 28.04.2023. It is rightly submitted by Mr. Anil Gaikwad learned Counsel for the Respondents that it is not open for the Appellants to claim title by way of adverse possession.

10. The cause of action does not commence from the year 1959 or from the possession Hotalappa. The cause of action is bundle of facts. It can be said to have arisen when from the revenue record, Respondents realized that there was no tangible material to confer title as well as from the notice reply dated 17.08.2017. Therefore the date when Respondents attained majority is not relevant to reckon the limitation. In other words, the cause of action arose to the Respondents when their title was denied and when the Respondents

learned that there was no tangible record to transfer suit land to Hotalappa and thereafter to the Appellants. The substantial questions of law in that regard is devoid of any substance.

11. Both the Courts below have recorded concurrent findings of facts after appreciating evidence on record. The substantial questions of law are devoid of any substance. Hence I pass following order :

ORDER

1. Second Appeal is dismissed.
2. Reasons to follow.
3. After pronouncement of the order, learned Counsel for Appellants prays for stay to execution and operation of the decree passed by the Trial Court.
4. Learned Counsel for Respondent opposes the request.
5. Appellants are in possession of the suit property. There was protection to their possession in the Lower Appellate Court also. There shall be stay to the execution and operation of decree of possession for the period of four (4) weeks only. After expiry of the said period, the stay granted to them shall stand vacated automatically.
6. The Appellants shall not create any third party interest till then.

[SHAILESH P. BRAHME]
JUDGE