



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

SECOND APPEAL NO. 232 OF 2014

Vimalbai Mohan Patil and others .. Appellants

Versus

Onkar Keshav Mahajan

Since deceased through LRs

Lilabai Onkar Mahajan and others .. Respondents

Shri Vijay B. Patil, Advocate for the Appellants.

Shri G. V. Wani, Advocate for the Respondent Nos. 1A to 1F.

WITH

SECOND APPEAL NO. 299 OF 2025

Gambhir Vitthal Patil

Since deceased through his L.Rs.

Sunil Gambhir Patil .. Appellant

Versus

Onkar Keshav Mahajan

Since deceased through LRs

Gangabai Wd/o Onkar Mahajan

and others .. Respondents

Shri Ujwal S. Patil, Advocate for the Appellant.

Shri G. V. Wani, Advocate for the Respondent Nos. 1A to 1F.

Shri Vijay B. Patil, Advocate for the Respondent Nos. 2 to 4.

CORAM : SHAILESH P. BRAHME, J.

DATE : 30TH SEPTEMBER, 2025.

FINAL ORDER :

. Heard both sides.

2. Both second appeals are emanating from R.C.S. No. 01 of 1999 filed by the respondent No. 1 - Onkar Keshav Mahajan for

possession based on title. His suit was decreed, which gave rise to R.C.A. No. 177 of 2003, which is subject matter of Second Appeal No. 299 of 2025 and R.C.A No. 190 of 2003, which is subject matter of Second Appeal No. 232 of 2014. Both the Courts below concurrently decided against the appellants. For the sake of convenience the parties are referred as per their original status in the suit.

3. The controversy pertains to land gut No. 45, which was purchased by the plaintiff - Onkar vide sale deed dated 13.01.1951, which is at Exhibit 61. The suit land was given to his sister Deubai in lieu of her maintenance. The appellants before this Court are lineal descendants of Deubai and her husband Vitthal. A mutation entry No. 380 dated 13.07.1956 vide Exhibit 39 was recorded in the name of Vitthal. Vitthal died in the year 1973 and Deubai died in the year 1983. Though suit land was given for maintenance, during lifetime of Deubai herself, the defendants failed to hand over the possession.

4. The suit is contested by the defendants on the ground that Vitthal had contributed while purchasing the suit land and nominal sale deed was executed in the name of plaintiff - Onkar. Due to the share of Vitthal the suit land was transferred to his name and mutation entry No. 380 was effected. Vitthal further transferred suit land to the defendant No. 1 - Gambhir and Mohan. A plea of adverse possession was also taken. It is contended that on the basis of long standing possession the

defendants perfected title and the suit is liable to be dismissed. Suit is also contested on the plea of limitation.

5. Plaintiffs adduced oral evidence of power of attorney - Lilabai, daughter of plaintiff. Defendants adduced oral evidence and relied upon the revenue record. Both the Courts below held that suit was within limitation, there was no transfer of title and defendants were unable to prove plea of adverse possession.

6. Learned counsel Mr. Ujwal Patil appearing for the appellants in Second Appeal No. 299 of 2025 and Mr. Vijay Patil, learned counsel appearing in Second Appeal No. 232 of 2014 would submit that suit was hopelessly barred by limitation because possession was handed over since 1951. Thereafter mutation entry No. 380 was effected on 13.07.1956. The limitation would commence from 1956. It is further submitted that in the year 1973 Vitthal died and thereafter Deubai died in the year 1983, whereas suit is filed in the year 1999. It is further submitted that no evidence has been adduced by the plaintiff because evidence of Lilabai, power of attorney, is not admissible in evidence. Plaintiff did not step into witness box. It is vehemently contended that the defendant No. 2 - Vimalbai had filed R.C.S. No. 72 of 1978 for partition and present suit land was also subject matter. Her suit was decreed and appeal preferred against that was dismissed, but still there was inaction on part of the plaintiff. It is contended that there is long standing possession. The mutation entry No. 380 has not been challenged

at any point of time. This would constitute adverse possession and both the Courts below have committed grave error of jurisdiction. It is submitted that there are substantial questions of law involved in the second appeals, which required admission.

7. Learned counsel Mr. G. V. Wani for the respondent Nos. 1A to 1F repels the submissions of the appellants. It is submitted that there is no title document executed in favour of the defendants. Mutation entry No. 380 cannot constitute transfer. It is submitted that the limitation of twelve years would commence when the possession becomes adverse. The cause of action aroused in the year 1999 itself. It is further submitted that long standing possession is not adverse possession. It is submitted that both the Courts below have concurrently recorded findings on appreciation of facts, which cannot be interfered with. It is further submitted that plaintiff was not party to the suit for partition filed by the defendant No. 2 - Vimalbai and he had no knowledge about the suit or its decision. Therefore, filing of the suit would not constitute the reckoning of period of limitation.

8. I have considered rival submissions of the parties. Undisputedly, plaintiff purchased suit land on 13.01.1951 by sale deed at Exhibit 61. The sale deed does not spell out that Vitthal or Deubai were joint owners or they had contributed anything for the purchase of the suit land. The exclusive ownership of the plaintiff cannot be disputed. The Trial Court has rightly dealt

with the provisions of the Prohibition of Benami Transaction Act. Defendants though cursorily raised plea that there was nominal sale deed executed in favour of the plaintiff, but Vitthal was the co-owner, has not been corroborated by any evidence on record.

9. Both the Courts below have dealt with plea of limitation. Trial Court had formulated issue to that effect. By reasoned order it is recorded that suit was filed within limitation. The mutation entry No. 380 (Exhibit 39) would not constitute transfer. By the mutation entry name of Vitthal was incorporated in the revenue record. It is the case of the plaintiff that land was given to Deubai for maintenance. Permissive possession is evident. The defendants are under obligation to make out a case that possession was adverse for twelve years or more. Merely long standing possession as well as entry of the names by mutation entry No. 380 are not sufficient to show the commencement of period of limitation. Both the Courts below have rightly dealt with that aspect of the matter. The cause of action arose in the year 1999 and thereafter the suit was filed.

10. The defendant No. 2 – Vimalbai had filed R.C.S. No. 72 of 1978 for partition. It was decreed by the Trial Court and appeal against that was dismissed. Plaintiff was not party, but the suit land was shown to be subject matter of that proceedings. There is nothing on record to disclose that plaintiff was aware of the litigation and despite knowledge he was in slumber. I find substance in the submissions made by the learned counsel Mr. G.

V. Wani that in absence of any knowledge, the adversity of the possession cannot be attributed to the plaintiff. It can be said that there was no reason for the plaintiff to know the interest partition amongst defendants. Therefore filing of suit by Vimalbai cannot be said to be declaration of any adverse or hostile title against the true owner. Both the Courts below have rightly dealt with plea of adverse possession.

11. I have already observed that filing of the suit by Vimalbai or the mutation entry No. 380 cannot be said to be starting point of limitation and would constitute adverse possession. Even the death of Vitthal or Deubai cannot be said to be indication to the true owner, that defendants had set up any claim adverse of title, openly and in derogation with the title of the original owner. I am of the considered view that parameters for adverse possession have not been met by the defendants.

12. Mr. Ujwal Patil, learned counsel relies on the order passed by the Coordinate Bench of this Court in the matter of Shankar Shridharrao Deshmukh Vs. Vyankatesh Shankarrao Deshmukh reported in *2007 (Supp.) Bom.C.R. 681*. The Coordinate Bench only admitted second appeal. It does not lay out any binding precedent. This order cannot be relied. Further reliance is placed on the judgment of Coordinate Bench of this Court in the matter of Maruti Dagadu Charwad (D) through L.Rs. Vs. Bhau Nama Gujar (D) through L.Rs. reported in *2017(5) Mh.L.J. 627*. In that case plea of adverse possession was taken by the defendant No. 1. He was in

possession since 1952 till filing of suit in the year 1978 openly and in derogation with the title of plaintiff therein. It was not a case of permissive possession. In that context plea of adverse possession was upheld. The facts are distinguishable. This judgment will not help the appellants.

13. Learned counsel for the respondents has placed reliance on the judgment of the Supreme Court in the matter of Neelam Gupta and others Vs. Rajendra Kumar Gupta and another reported in *2024 All SCR 2152*. In that case various judgments are considered by the Apex Court from para Nos. 36 to 44 for considering the submission of adverse possession. Considering those parameters, I have held that appellants have failed to prove plea of adverse possession.

14. Plaintiff did not step into witness box, but examined his daughter Lilabai. It is trite law as laid down by the Supreme Court in the matter of Janki Vasudeo Bhojwani and others Vs. Indusind Bank Ltd. and others reported in *2005(1) Mh.L.J. 1170* that evidence of power of attorney is not admissible and the exception is that if the attorney has special or personal knowledge of the transaction. This aspect is dealt with by the lower Appellate Court. She is the member of family. She can be treated as witness, albeit not for transaction between parties. She as well as other defendants were minor at the relevant time. Even if the oral evidence of Lilabai is excluded, still no case is made out by the defendants. I find that defence is founded on a very fragile plea that suit land was transferred by way of mutation entry. I

find that there is no convincing evidence on record to show that there is transfer of title or plea of adverse possession. I do not find any substantial question of law involved in both the appeals. Both second appeals are dismissed.

15. After pronouncement of the judgment, learned counsel for the appellants prays for grant of stay to the operation and execution of decree passed by the Trial Court, which is confirmed by today's minutes of order.

16. Learned counsel for the respondents opposes the prayer on the ground that there was no stay to the execution of the decree passed, during pendency of appeal.

17. Second appeals were filed way back in the year 2014. Even one of the appeals was filed belatedly and delay was later on condoned. During pendency of appeals no stay was operational to the execution of the decree passed by the trial Court. The plaintiff is striving for possession since 1999. I am not inclined to accept the prayer made by the appellants. It stands rejected.

[SHAILESH P. BRAHME J.]

bsb/Sept. 25