



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 87 OF 2025

1. Sushila Ramesh Kanjar
Age : 79 years, Occ: Household;
2. Dinesh Ramesh Kanjar
Age : 50 years, Occ: Service;
3. Mangala Dinesh Kanjar
Deceased through LRs:
 - a. Kamlesh Dinesh Kanjar/Malkekar
Age : 29 years, Occ.: Service,
All 1 to 3a R/o Near Railway Station,
Nardane, Tal. Shindekheda, Dist. Dhule.
 - b. Kajal Shashikant Machare
Age : 28 years; Occ: Household;
R/o. c/o. Shashikant Machare,
Yamuna Nagar, Lane No.1, Vimannagar,
Pune, Tal. And Dist. Pune.
 - c. Ashwini Shashikant Rawalkar,
Age : 26 years, Occ.: Household,
R/o. Link Road, Bhat Nagar,
Pune, Tal and Dist. Pune.

.. Appellants

Versus

1. Nareshkumar Javharilal Jain
Deceased through LRs:
 - a. Jayesh Nareshkumar Jain (Bothra)
Age : Adult, Occ.: Education,
 - b. Hema Nareshkumar Jain (Bothra)
Age : Adult, Occ.: Education,
 - c. Karishna Nareshkumar Jain (Bothra)

Age : Adult, Occ.: Private Service,
All R/o Nardana, Tal. Shindkheda,
Dist. Dhule.

2. Dashrath Ramesh Kanjar,
Age : 56 years, Occ.: Labor.
R/o. Nardana, Tal. Shindkheda,
Dist. Dhule.

.. Respondents

- * **Mr. Girish V. Wani i/by Mr. Niranjan V. Dhake**
Advocate for the Appellants.
- * **Mr. S. P. Shah,**
Advocate for the Respondent No.1-A (Caveator).

CORAM : SHAILESH P. BRAHME, J.

DATE : 23rd JUNE 2025

FINAL ORDER :

- . Heard both sides.

2. Appellants are assailing concurrent findings of facts in the present appeal. Respondent No.1 had filed RCS No.24/2003 for perpetual and temporary injunction against the Appellants and the Respondent No.2. It was decreed vide judgment dated 29.04.2017. Regular Civil Appeal No.81/2017 preferred by the Appellants was dismissed on 03.08.2024.

3. It's a case of Respondent No.1 that he is owner of land survey no.129 measuring 12R. It was encroached by the Appellants by abrogating southern boundary and on 17.03.2003 and 18.03.2003 construction was started. Appellants had no right, title or interest

to enter suit land and their structure was illegal. The plaint was amended, after rejection of application for temporary injunction. It was contended vide newly incorporated pleadings that encroachment and illegal structure was noticed in the measurement conducted by Taluka Inspector and land record which was undertaken on 16.02.2004.

4. The suit is contested by the Appellants on the ground that they are in possession since last 50 to 60 years. The suit is barred by limitation. They perfected title by adverse possession.

5. Learned Counsel Mr. Girish Wani holding for Mr. Niranjana Dhake for the Appellants submits that possession of the Appellants is admitted by the Plaintiff in the cross-examination. The suit was barred by limitation because it should have been filed within three years as per Article 113 of the Limitation Act, either from 1992 or from 1999. It is further submitted that possession of the Appellants is apparent from order, rejecting application for temporary injunction, Ration Card, Voters' list and the cross-examination of the Plaintiff. It is further contended that both the Courts below did not consider the plea of limitation in correct prospective. The Lower Appellate Court has committed patent illegality in holding that Article 65 is attracted. Lastly it is contended that when the property was measured by the Court Commissioner, it was not identified by the Respondent No.1 and the location of the encroachment has not been proved.

6. Per contra, learned Counsel Mr. Shah appearing for the Respondent No.1 – contesting party would repel the submissions

on the ground that there are concurrent findings of facts. The Appellants have not proved their title over the suit land. Whereas Respondent No.1 purchased the same vide sale deed dated 07.02.1999. It is submitted that considering the pleadings and the evidence on record, plea of limitation has been rightly dealt with. My attention is adverted to cross-examination of DW-2. He would further submit that there is no evidence on record to show possession of the Appellants for 50 to 60 years. He also would refer cross-examination of the Plaintiff.

7. Learned Counsel Mr. Girish Wani would press into service. The substantial questions of law enumerated in ground nos. XIII to XVI of the appeal memo.

8. I have considered rival submissions of the parties. There are concurrent findings of facts. Initially suit was decreed and in appeal, order of remand was passed. After remand again the suit was decreed. Appeal preferred by the Defendant against the decree is dismissed. After remand, cadastral surveyor was appointed. The suit land is properly described in the plaint. Identification of the suit land or location of the illegal structure are not in dispute. The main contention of the Appellants is that they are in longstanding possession of the house and they have acquired title by adverse possession.

9. The issue of limitation was framed by the trial Court and by recording reasons, it was answered in favour of the Respondent No.1. Lower Appellate Court has also dealt with it and observed

that suit was governed by Article 65.

10. The suit is filed for perpetual and mandatory injunction. It is not a suit for possession on title. It is contended in the plaint that Appellants started encroachment by damaging southern boundary somewhere on or about 17.03.2003 and they constructed structures illegally. It is not a case of the Respondent/Plaintiff that there was dispossession from entire area of the land. Therefore no relief of possession is solicited. Hence the case is not governed by Article 65 of the Limitation Act. For the relief of mandatory injunction to remove the illegal encroachment Article 113 is attracted. I find that the conclusion recorded by both the Courts below on the plea of limitation is proper and correct.

11. I am of the considered view that mere possession of the Appellants would not give rise to cause of action. On or about 17.03.2003, overt-act was committed by the Appellants by making construction and the structures are noticed in the measurement and the map of the Surveyor. Suit is filed within limitation. I do not find any merits in the substantial questions of law posed for the consideration of the present appeal.

12. There is absolutely no pleadings and evidence on record to corroborate plea of adverse possession. There is nothing on record to demonstrate that possession was hostile, open and in derogation with title of the Respondent no.1. The substantial questions of law in this regard has no merit.

13. According to the Plaintiff, Appellants illegally entered the suit land and started construction on or about 17.03.2003 and thereafter they completed the construction. There is nothing on record to dispute the sale deed dated 07.12.1999 by which the Respondent No.1 purchased the suit land measuring 12R. There is no material on record that possession of the Appellants or their structures are lawful. Mere factum of possession either from 1992 or from 1999 would not enure to the benefit of the Appellants. Mere longstanding possession would not confer any right, unless plea of adverse possession is substantiated and proved. Therefore plea of longstanding possession would not give rise to any substantial questions of law.

14. I have gone through admissions of the Plaintiff in the cross-examination, disclosing that house of the Appellants was in-existence, but it was clarified further by the same witness that it was on the abetting land belonging to Railway. I have also gone through the admission in the cross-examination of witness of the Appellants, Mr. Sadashiv Mangale stating that Appellants were residing there since 3 to 4 years. This admission belies the theory of the Appellants that either they are in possession since last 50 to 60 years or they are in possession from 1992.

15. Reliance is placed by the learned Counsel Mr. Girish Wani on the judgment in the matter of **R. Kumar Vs. G. Jaganmoorthy**, 2017 SCC Online Mad 33015, rendered by the learned Single Judge of Madras High Court. The facts of that case are distinguishable.

No ratio as such laid down by the judgment is pointed out. I am not being persuaded by the judgment.

16. For the reasons stated above, there is no merit in the Second Appeal.

17. Second Appeal is dismissed.

[SHAILESH P. BRAHME]
JUDGE

NAJEEB..