



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 5 OF 2024 WITH
CIVIL APPLICATION NO. 504 OF 2024
IN SA/5/2024

Shakuntala Yashwant Funge And Ors

VERSUS

Narayan Rama Barde

• Mr. V. H. Pathade, Advocate for the Appellant

CORAM : R. M. JOSHI, J

DATE : JANUARY 29, 2025

PER COURT :

1. This Appeal under Section 100 of the Code of Civil Procedure takes exception to the concurrent findings recorded by the Trial Court in RCS No. 879/2012 and RCA No. 2/2018 by original Defendants.

2. Parties are referred to as Plaintiff and Defendants for sake of convenience.

3. The facts, as they appear from record, indicate that Plaintiff filed suit for restoration of encroached portion and mesne profits. He filed suit with specific averment that on 27.11.2009 he purchased the suit land under a registered sale deed from the erstwhile owner Suryabhan Lahanu Funge. He further

claims that since then he is in possession of the suit land. It is alleged that the Defendants caused encroachment over the portion of the land purchased by the Plaintiffs.

4. Defendants resisted the suit by filing written statement denying that there is no any encroachment, however, alternatively plea is raised of adverse possession of the encroached portion.

5. Initial burden was on the Plaintiff to prove that the Defendants have encroached upon the suit property. In order to substantiate his case, he led evidence of himself as well as examined TILR to prove the survey map. The Trial Court as well as First Appellate Court have accepted the evidence of surveyor who has shown the extent of encroachment caused by the Defendants in the suit property. Once Plaintiff has proved his title in respect of suit property and also shown encroachment being done by Defendants on the suit property, Plaintiff has discharged his burden of proving his case. Onus, therefore, has shifted upon the Defendants to prove their claim of adverse possession.

6. On behalf of Defendant No. 1, his constituted attorney Annasaheb Yashwant Funge was examined. In his evidence, it is specifically admitted that on 27.11.2009 his paternal uncle has sold suit property to Plaintiff. He also candidly stated that since then Plaintiff is cultivating the suit land. Once it is admitted by Defendants that after 2009 the Plaintiff was cultivating the land, question of accepting case of the Defendants about ownership on the basis of adverse possession does not arise.

7. Perusal of the evidence on record indicates that same has been rightly taken into consideration by both Courts below. As such, this Court finds no perversity in the findings of fact recorded by both Courts. Hence, no substantial question of law is involved in this Appeal. In the result, Appeal stands dismissed. Pending civil application stands disposed of.

(R. M. JOSHI, J.)