

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL 402 OF 2024
WITH
INTERIM APPLICATION NO. 3090 OF 2020**

Ravindra Ramdas Patil (Since deceased)
through Legal Heirs-

1. Alka Ravindra Patil & Ors.

....Appellants

V/S

The Deputy Welfare Commissioner,
Maharashtra Kamgar Kalyan Bhavan

....Respondent

Mr. Chaitanya Nikte a/w. Adv. Sakshi Thombre i/b. Mr. Prajeet Sahane for
the Appellants.

Mr. S. S. Deshmukh for the Respondent No. 1

CORAM : M. M. SATHAYE, J.

DATED : 24th JUNE, 2025

P.C.:

1. Heard learned Counsel for the parties.
2. The Appellants are legal heirs of original Defendant in the Special Civil Suit No. 45 of 2005 which was filed by the Respondent/Sole Plaintiff for declaration and recovery of possession of the suit premises. The said Suit was decreed by the Trial Court on 31/08/2012 directing the Appellant / original Defendant to hand over possession of the suit premises and declaration was granted that the Defendant has no concern with the same. The Defendant challenged the Judgment and Decree of the Trial Court by

filing Regular Civil Appeal No. 195 of 2012, which was dismissed under impugned Judgment and Decree dated 28/11/2019.

3. In these circumstances, the Appellants are before this Court in Second Appeal, required by law to cross the threshold of substantial question of law under Section 100 of the Civil Procedure Code, 1908.

4. The case of the Respondent/Plaintiff as emerging from the plaint is as under:

In or about 1975, a company called Century Rayon Ltd. ('the said company', for short) has placed the suit premises at the disposal of welfare department. The suit premises were given by the said company free of charge. The Respondent had started a gymnasium in the said premises. It was informed to the office of the Respondent that from one Shri. Dhule who was having duty hours, the Defendant used to collect the key to conduct gymnasium activity illegally. The defendant has been collecting fees illegally from persons attending gymnasium. It was learnt that the Defendant has taken forcibly possession of the suit premises from 11.11.2001. Since the Defendant managed to get his name on electric meter and municipal record, necessary steps were taken by Respondent and the name of the Defendant was removed. The Respondent is paying municipal taxes. Though the Respondent approached the municipal corporation

authority as well police, the illegal occupation of the Defendant continued. Therefore, the suit is filed for recovery of possession and declaration, as stated above.

5. The Appellant filed written statement and denied that he has taken forcible possession of the suit premises. He contended that the suit is barred by limitation. It is his case that the Respondent is not the owner of the suit premises and it belongs to the said Company who is not made party to the Suit. That Appellant's father was working in the said Company and he was having cattle shed over the suit premises since 1970 and since his father was fond of exercise, he used the cattle shed for the purpose of wrestling and thereafter constructed a gymnasium with his own funds. It is contended that nobody raised objection and therefore a defence of adverse possession is the set-up.

6. On behalf of the Respondent/Plaintiff, oral as well as documentary evidence was led by examining two witnesses. The Appellant examined himself and placed reliance on documentary evidence.

7. The learned Counsel for the Appellants submitted that with clear a finding by the Appellate Court that the said Company seems to be the real owner of the suit premises, decree of the possession could not have been sustained in as much as, the Respondent has not proved his title. He further submitted that there is documentary evidence to indicate the possession of

the Appellant since 1997 and therefore the Suit could not have been decreed even on the basis of the prior possession.

8. He has relied upon the judgment of **Union of India and Ors. vs. Vasavi Cooperative Housing Society Limited [(2014) 2 SCC 269]** to contend that the Plaintiff has to stand or fall on his own feet and weakness in defence can not be the reason for decreeing the suit.

9. I have considered the submissions and perused the record.

10. At the outset, it is necessary to note that the plea of adverse possession as set up by the Appellant/Defendant has been turned down by the Trial Court and the Appellate Court concurrently. The learned Counsel for the Appellants fairly concedes on instructions, that since it is his own case the real owner is said company and not the Respondent, the defense of adverse possession could not have been set up and therefore, he accepts on instruction, that a weak defence was set up by the Appellant. He submits that even then, it is a settled position of law that the Plaintiff must stand on his own feet and weakness in the defence is no ground for decreeing the suit.

11. Perusal of the Plaint as well the judgments of the Trial Court and the Appellate Court would indicate that the Respondent/Plaintiff has claimed that the Department is in possession of the suit property since 1975. Both the Courts on appreciation of evidence such as correspondence between the

said Company and Respondent, Corporation tax notices, tax paid receipts, police complaints against the Appellant, have concluded that there is sufficient material on record to indicate that indeed suit premises were allotted / given by the said Company to the Respondent. Correspondence between the said company and Respondent is produced on record at Ex. 46 to 55 dating back to 1974. As against this, the documents suggesting possession of the Appellants are in the form of Application for light and water connection, Corporation tax payments which indicate time period of around 1997.

12. Admittedly, it is neither the case of the Appellants nor there is any evidence in support thereof, that the Defendant is either owner or licensee or interested person inducted under any other form known to law in the suit premises. It is merely asserted that father of the Appellant was in possession of the suit premises. No document in support of any right or interest for genesis of possession is produced on record.

13. In such circumstances, the Appellate Court has held that possession is being sought by the Respondent vis-a-vis the Appellant, in the capacity of better-title holder. This is not a suit merely on the basis of previous possession. It is a suit on the case of suit property being given by the said Company free of charge. Since the Courts found documents of allotment of the suit premises since around 1975, the Appellate Court has applied Article

64 of the Limitation Act which provides for suit for possession of immovable property based on previous possession.

14. So far as argument of the Appellants that the suit could not have been decreed on the basis of previous possession because Appellant can be seen in possession at least from 1997, it must be noted that, in the absence of any clear right or interest of the Appellant in the suit premises, either pleaded or proved, no fault can be found with the application of Article 64 because concurrently it is held, as a finding of fact, that the Respondent was allotted the suit premises since 1975 which is much prior to 1997. Therefore prior possession of the Respondent can not be doubted.

15. So far as the judgment of **Union of India Vs. Vasavi Co-Operative Hsg. (supra)** is concerned, in the said case, suit was filed for 'declaration of title' and possession, and the Hon'ble Supreme Court was dealing with burden of proof, and in that context it is held that the Plaintiff has to succeed only on the strength of his own case and not on the weakness of the case set up by the Defendant. In the present case, there is no prayer seeking declaration of title. Pleadings overall clearly indicate that possession is sought on the basis of prior possession, as contemplated under Article 64 of the Limitation Act. No doubt the Plaintiff must stand or fall on his own feet. However, the feet of the Respondent Department are found to be strong enough, as indicated above.

16. In the absence of any evidence to indicate in what capacity the original Defendant has been in possession, the case and the evidence has been considered by the Trial Court as well as Appellate Court in proper perspective. No perversity is found. The factual aspects of the matter are decisive. No substantial question of law is arising.

17. The Second Appeal is accordingly dismissed. In view of the dismissal of the Appeal, the Interim Application is also dismissed.

18. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)