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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 366 OF 2023**

Shri Shivaji Ganpati Mohite ... Appellants
(since decd) through LRS and Others

Vs.

The State of Maharashtra and Another ... Respondents

Mr. A.M. Kulkarni a/w. Mr. Sachin Hande for the Appellants.

CORAM : GAURI GODSE, J.

DATE : 30th APRIL 2025

ORDER :

1. Heard learned counsel for the appellants. This appeal is preferred by the plaintiff to challenge the concurrent judgments and decrees dismissing the plaintiff's claim of ownership in respect of CTS No. 113. The suit was filed seeking declaration and injunction in respect of the house properties and open site situated at CTS No. 167 and 113 alongwith abutting road mentioned as letter Z shown in the City Survey map. The trial court granted decree in respect of CTS No. 167 however refused the prayer for declaration and injunction in respect of CTS No. 113 and Z sized portion. This decree is confirmed by the first appellate court in the appeal preferred by the plaintiff. Hence, this second appeal by the plaintiff.

2. Learned counsel for the appellants submits that the plaintiff claims ownership and injunction to protect his possession on the ground of lawful possession based on a possession receipt. He submits that defendant no. 2 i.e. State Government though appeared failed to file any written statement. He submits that defendant no.1-Gram Panchayat filed a written statement and opposed the plaintiff's claim on CTS No. 113 and Z sized portion. He submits that since the claim on CTS No. 167 was not disputed, both the courts accepted the plaintiff's possession as lawful possession and granted decree for declaration and injunction. However, the plaintiff's claim of CTS No. 113 and Z sized portion based on the same possession receipt was refused, though defendant no. 2- the State Government filed no written statement. He thus submits that the analogy applied for accepting statements for the claim on CTS No. 167 would also be applicable so far as the claim of CTS No. 113 and the Z sized portion is concerned. He submits that inconsistent principles applied by both the courts to decide the plaintiff's claim would therefore raise substantial question of law in the second appeal.

3. I have perused the papers of the second appeal. Both the courts refer to the evidence led by the plaintiffs and the Court Commissioner's report and oral evidence. Defendant no. 1-Gram

Panchayat also led oral evidence to support their contention with regard to CTS No. 113 and the Z sized portion. There is no dispute that the CTS No. 113 and Z sized portion is recorded as 'Sarvajanik Shri Narsoba Devasthan-Vahiwatdar-Sarpanch, Gram Panchayat Karnal' in the CTS record.

4. The CTS record is admittedly never challenged by the plaintiff. Though the plaintiff raised claim of ownership on the ground of lawful possession pursuant to the possession receipt of 1970, the same was not produced before the court. Thus, for want of any evidence to support the plaintiffs claim of ownership and lawful possession in respect of CTS No. 113 and Z sized portion both the courts refused to grant any decree for declaration and injunction. Except for the oral claim of the plaintiff no material is produced on record to support his contention of ownership and lawful possession in respect of CTS No. 113 and the Z sized portion.

5. Both the courts have considered the evidence on record and refused a decree for declaration and injunction. Hence, I see no reason for interfering in the impugned judgment. There is no illegality or perversity in the reasons recorded by both the courts.

6. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

[GAURI GODSE, J.]