

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 271 OF 2025
WITH
INTERIM APPLICATION NO. 6787 OF 2025

Naniben Chhibubhai Patel (Deceased) And
Ors.

...Appellants

Versus

Savitaben Kabla Patel And Ors.

...Respondents

Mr. Rajendra Kamble, a/w Dinesh Sonawane and Sangharsh
Apte, i/b Dr. Suresh Mane, for the Appellants.

CORAM: N. J. JAMADAR, J.

DATED: 24th DECEMBER, 2025

Order:-

1. Heard the learned Counsel for the appellants.
2. This second appeal is directed against a judgment and decree dated 13th July, 2023 passed by the learned Principal District Judge, Daman, in Civil Appeal No.1 of 2016, whereby the said appeal against a judgment and decree, dated 7th December, 2025, dismissing RCS/11/2003, instituted by the appellants - plaintiffs, came to be dismissed.
3. The appellants claimed to be the heirs of Chibhubhai Patel, who was allegedly the holder of the land bearing Survey No.342/3 and 342/3-B situated at village Kachigam, Nani

Daman ("the suit land"). The appellants claimed to be in possession of the suit land. As respondent No.1, who is the widow of Kabla Babar, the son of Babar Lallu, started to cause obstruction to the peaceful possession of the appellants over the suit land, the suit came to be instituted for a decree of perpetual injunction.

4. It was the defence of the respondents that late Babar Lallu had been in possession of the suit land since Portuguese Regime and in the Vagda Patrak of village Kachigam, prepared after liberation, the name of Babar Lallu came to be mutated in the Vagda Patrak register as Babar Lallu was in actual and physical possession of the suit land. The Planning Authority has granted construction permission and, in pursuance thereof, the respondents have constructed a building over the suit land.

5. By a judgment and decree dated 7th December, 2015, the learned Civil Judge was persuaded to dismiss the suit returning a finding, *inter alia*, that the plaintiffs failed to prove that the plaintiffs were in possession of the suit land, and the defendants caused obstructions to the plaintiffs peaceful possession and enjoyment.

6. Being aggrieved, the appellants preferred first appeal, being Civil Appeal No.1 of 2016. By the impugned decree, the learned Principal District Judge, dismissed the appeal as well, concurring with the view of the learned Civil Judge.

7. Mr. Kamble, the learned Counsel for the appellants would submit that the Courts below committed a manifest error in law in basing their findings on the strength of the entries in the Vagda Patrak, by completely discarding the evidence adduced by the plaintiffs. Such misconstruction of evidence and the legal import of the entries in the revenue record, gives rise to a substantial question of law.

8. I have perused the impugned judgments and decree and the material on record. Evidently, the suit was instituted for perpetual injunction premised on actual and physical possession of the suit land. It was, thus, incumbent upon the plaintiffs to establish the factum of possession.

9. Both the Courts below have recorded concurrent findings of facts that the plaintiffs failed to establish that they were in actual and physical possession of the suit land. The learned Principal District Judge, *inter alia*, noted that the suit land was cultivated by Babar Lallu, as was evident from Vagda Patrak,

and the order passed by the Mamlatdar in DAPVR proceeding bearing No.23/1985 was of no assistance to the plaintiffs as the said order was reversed and, thereafter, no authority has passed any order in favour of the plaintiffs. Upon reappraisal of the evidence and material on record, the learned Principal District Judge agreed with the view of the trial Court that the plaintiffs failed to prove the possession over the suit land and, resultantly, there was no question of obstruction to possession.

10. It would be contextually relevant to note that the trial Court, in paragraph 30 of the judgment and decree dated 7th December, 2015, has recorded that the defendants had brought material on record to show that they were in possession of the suit land and, conversely, the plaintiffs failed to establish their possession and enjoyment over the suit property and the claim of the plaintiffs that the deceased Chibubhai had permitted them to construct the building and they were running Bar and Restaurant therein, could not be substantiated.

11. The aforesaid findings of facts, are based on positive evidence which shows the possession of the defendants over the suit land. In contrast, not an iota of evidence could be adduced by the plaintiffs to substantiate their claim of possession. Thus, this Court, in exercise of the jurisdiction under the regime of

Section 100 of the Code of Civil Procedure, 1908, does not find any reason to interfere with the same. No question of law, much less, a substantial question of law, arises for consideration. Resultantly, the appeal deserves to be dismissed.

12. The appeal stands dismissed.

13. In the view of dismissal of the appeal, IA/6787/2025 also stands disposed.

[N. J. JAMADAR, J.]