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# IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## SECOND APPEAL ST NO. 6114 OF 2025
## WITH
## INTERIM APPLICATION NO. 2763 OF 2025
## IN
## SECOND APPEAL ST NO. 6114 OF 2025

Chandrashekhar Kashiram Mavlingkar .....Appellant

Vs.

Rajanidevi Hariprasad Agarwal and ors .....Respondents

Prashant B. Darandale for the appellant

CORAM : GAURI GODSE, J.

DATE : 24th FEBRUARY 2025

ORDER:

IRESH MASHAL

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Date: 2025.03.03 18:24:01 +0530

1. Heard learned counsel for the appellant. This appeal is preferred by the defendant to challenge the judgment and decree passed by the first Appellate Court granting prayer for possession after removal of encroachment. Both the Courts have concurrently held that the plaintiffs are the owners of the property. The trial Court had dismissed the prayer for possession. Hence, the first appeal was preferred by the plaintiffs. The first Appellate Court has confirmed the findings on

ownership and granted decree for possession. Hence, this second appeal by the defendant.

2. Learned counsel for the appellant submits that the oral evidence led by the plaintiffs to prove the encroachment was based on the witness who had no personal knowledge about the encroachment. He, therefore, submits that the trial Court rightly rejected the prayer for possession. He submits that there was difference in the area of encroachment alleged by the plaintiffs and the area claimed to be in possession by the defendant. He, therefore, submits that in the absence of any specific evidence on the alleged encroachment, the first Appellate Court has erred in granting the decree for possession. He submits that after the development agreement was executed by the original owner, the measurement was carried out and at the behest of the developer, the defendant is sought to be dispossessed. He, therefore, submits that the second appeal would require consideration as the aforesaid grounds raise substantial questions of law.

3. I have perused the papers of the second appeal. The suit is filed based on title of the plaintiffs with an allegation that the defendant has encroached on the plaintiffs' property. The defendant by filing written

statement denied the plaintiffs' ownership and claimed to be in possession for more than 18 years. Based on the claim of long-standing possession, the defendant claimed to have perfected the title by way of adverse possession. However, the ownership of the plaintiffs is disputed by the defendant. Both the Courts have concurrently held that the plaintiffs are the owners of the property. The defendant, except for claiming long-standing possession has failed to plead and prove his valid source of possession over the suit property. Perfection of title by adverse possession is claimed only on the ground of long-standing possession, by denying the plaintiffs' ownership. Hence, both the Courts have disbelieved the defendant's theory of adverse possession.

4. So far as the encroachment is concerned, the defendant admittedly is in possession of part of the suit property. In view of the admitted fact of defendant being in possession of the part of the suit property, the first Appellate Court held that no independent evidence was necessary to prove the encroachment. Hence, in view of the admission of being in possession and in the absence of any valid source of title, the defendant is held to be in unlawful possession. Hence, there is a decree of possession and after removal of encroachment. In view of these admitted facts and the reasons

recorded by the first Appellate Court, I see no reason to interfere in the impugned judgment. The grounds raised on behalf of the appellant to oppose the decree of possession would not require any consideration by this Court, in view of the findings recorded by the first Appellate Court. The findings recorded by the first Appellate Court are based on admitted facts.

5. The arguments raised on behalf of the appellant, therefore, do not raise any substantial question of law. The second appeal is therefore dismissed. In view of the dismissal of the second appeal Interim Application No. 2763 of 2025 is disposed of as infructuous.

[GAURI GODSE, J.]