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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 6625 OF 2025

IN

SECOND APPEAL NO. 954 OF 2022

Kumar Vithoba Kale
(Since Deceased) and ors

.....Applicants

Vs.

Sangita Subhash Yadav
and anr

.....Respondents

Mr. Sugandh Deshmukh a/w Mr. Aniket Kanawade, Mr. Vaibhav Thorave, Mr. Irvin Dsouza, Ms. Karishma S. for the applicants

CORAM : GAURI GODSE, J.

DATE : 4th APRIL 2025

ORDER:

1. This application is for bringing on record names of heirs and legal representatives of the sole appellant. There is delay of 335 days in filing the application.

2. Learned counsel for the applicants submits that the application was notarized on 10th June 2024 and it was e-filed. However, due to technical difficulties and change in the website module of e-filing, the application was uploaded afresh. He, therefore, submits that the delay

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in registering the application is due to inevitable circumstances and there is no negligence on the part of the applicants.

3. I have perused the application and the reasons stated in the application. In the facts and circumstances of the case, delay is condoned and the application is allowed in terms of prayer clause (A) and (B).

4. Amendment to be carried out within four weeks.

5. I have heard learned counsel for the appellants on the merits of the second appeal. The second appeal is preferred by the original defendant no. 1 to challenge the judgment and decree passed by the first Appellate Court. The suit for simpliciter injunction by respondent no. 1 was dismissed by the Trial Court. The appeal preferred by the plaintiff is allowed and the suit for injunction is decreed restraining defendant no. 1 from obstructing the possession of the plaintiff and her brother on the suit land. The plaintiff's brother was added as defendant no. 2.

6. Learned counsel for the appellants submits that the first Appellate Court has reversed the Trial Court's findings on possession. He submits that except for the plaintiff's name in the revenue record,

no substantive evidence is produced to support her contention that she and defendant no. 2 were in possession of the suit property. He submits that the plaintiff, after her marriage was residing in her matrimonial home and she was never in possession of the suit property. He further submits that the plaintiff's father Dattatray was taken care of by defendant no. 1. He submits that prior to the death of the Dattatray, defendant no. 1 was in possession of the suit property. He submits that the oral evidence led by defendant no. 1 supports his contentions that he was cultivating the land and the plaintiff was never in possession of the suit property. He submits that findings recorded by the Trial Court to grant injunction only based on 7/12 extract would not be sustainable. He, thus, submits that in a suit for simpliciter injunction to protect possession, the burden was upon the plaintiff to prove, by substantial evidence that she was in possession of the suit property. He, thus, submits that the second appeal would require consideration as the aforesaid grounds raise substantial questions of law.

7. I have perused the papers of the second appeal. There is no dispute that the suit property is agricultural land and owned by plaintiff's father Dattatray. After death of Dattatray, name of the plaintiff and her brother i.e. defendant no. 2 is entered in the revenue record.

The revenue record entering the name of plaintiff and defendant no. 2 is not disputed. The plaintiff claims that defendant no. 1 obstructed the plaintiff from cultivating the suit land and, thus, she was constrained to file the suit. The plaintiff, to support her contentions examined two witnesses. The oral evidence in support of the plaintiff's case is discussed and appreciated by the first Appellate Court. The oral evidence of defendant no. 1 is also exhaustively discussed by the first Appellate Court. Considering the revenue record in favour of the plaintiff and the oral evidence led in support of her contention that she is in possession of the suit property, the first Appellate Court reversed the Trial Court's findings.

8. The contentions raised by defendant no. 1 of perfecting the title by way of adverse possession is also discussed by the first Appellate Court. Defendant no. 1's contentions of being in possession is disbelieved by the first Appellate Court, by examining his oral evidence. Except for his own oral evidence, defendant no. 1 failed to produce any evidence that he was in possession of the suit land or was cultivating the same. Considering the findings recorded by the first Appellate Court, accepting the plaintiff's possession based on the revenue record and the oral evidence, I see no fault in the injunction

granted by the first Appellate Court. The findings recorded by the first Appellate Court are based on revenue records and the oral evidence. There is no illegality or perversity in the reasons recorded by the first Appellate Court.

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

[GAURI GODSE, J.]