



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO. 161 OF 2021

Vatsala Wd/o. Haribhau Jambhulkar,
Age : 72 Years, Occu. : Retd. Teacher,
R/o. Saundad, Tq. Sadak Arjuni,
Dist. Gondia.
R/o. Near Gayatri Public School,
Satkar Nagar, Ganeshpur,
Tq. & Dist. Bhandara.

.... Appellant

VERSUS

1. Ghanshyam S/o. Durwalu Shahare (Deceased)
Through
 - a) Smt. Janki Wd/o. Ghanshyam Shahare,
Age : 65 Years, Occu. : Household,
 - b) Mangesh S/o. Ghanshyam Shahare,
Age : 40 Years, Occu. : Private Job,
 - c) Ranjit S/o. Ghanshyam Shahare,
Age : 38 Years, Occu. : Private Job,
 - d) Pranay S/o. Ghanshyam Shahare,
Age : 35 Years, Occu. : Private Job,
All R/o. Plot No.202, Mohan Regency,
Aadharwadi, Near Jail Kalyan (West),
Thane (M.S.).
2. Ramesh S/o. Darwalu Shahare (Deceased)
Through

- a) Smt. Jotshana Wd/o. Ramesh Shahare,
Age : 55 Years, Occu. : Household,
- b) Ratnadip S/o. Ramesh Shahare,
Age : 20 Years, Occu. : Cultivator,
Both R/o. Krishna Ward,
Behind Lohiya School,
At Post Soundad, Tq. Sadak Arjuni,
Dist. Gondia (M.S.).
- 3) Prabhu S/o. Durwalu Shahare,
Age : 57 Years, Occu. : Cultivator,
R/o. Soundad, Tq. Sadak Arjuni,
Dist. Gondia.
- 4) Madan S/o. Durwalu Shahare,
Age : 61 Years, Occu. : Service,
R/o. Soundad, Tq. Sadak Arjuni,
Dist. Gondia.
- 5) Tarabai S/o. Shridhar Nandeshwar,
Age : 68 Years, Occu. : Household,
R/o. Gaddi Godown, Sundar Nagar,
Nagpur, Tq. & Dist. Nagpur.

.... Respondents

....
Advocate for Appellants : Mr. N.S. Talmale and Mr. S.P. Mokadam
Advocate for Respondents : Mr. R.D. Bhuiabhar
....

CORAM : ROHIT W. JOSHI, J.

Dated : 03rd September 2025

JUDGMENT :

1. The present appellant takes an exception to concurrent decrees for possession passed by learned Principal District and

Sessions Judge, Gondia, in RCA No.125 of 2013, dated 24.02.2021, and by learned Civil Judge Junior Division, Sadak Arjuni, in RCS No.10 of 12, dated 30.08.2013,

2. Vide order dated 16.11.2022, following two substantial questions of law were framed in the present appeal.

“i) Whether in facts and circumstances, the possession of appellant became adverse since 07/04/1983 as per ratio laid down the Hon’ble Apex Court in C.A. No.420/1963 decided on 27/08/1965, Mamidi Venkata Satyanarayana Manikyala Rao and other Vs. Mandela Narsimha Swami and permissive possession became adverse after 06/04/1983 ?

ii) Whether the both courts have committed Jurisdictional error by not framing issue about adverse possession and consequently the appellant is deprived from proving it?”

3. Thereafter, another substantial question of law was framed vide order dated 04.08.2025, which reads as under :

“Once the Court has protected the appellants under Section 53-A of the Transfer of Property Act, 1882 in Regular Civil Suit No. 145/1979, whether the respondents will be entitled to recover the possession in the wake of the liberty given by the trial Court in Regular Civil Suit No.68/2008 ?

4. The substantial questions of law framed vide order dated 16.11.2022, pertain to adverse possession and the substantial question of law framed vide order dated 04.08.2025, pertains to protection under Section 53-A of the Transfer of Property Act, 1883 (for short, “the Act”). In case, the appellant seeks claim over the suit property by way of adverse possession, she cannot claim protection under Section 53-A of the Act. The protection of possession under Section 53-A of the Act can be granted only if the possession is lawful and in order to claim adverse possession, the nature of possession must be unlawful and hostile. In view of the peculiar situation, learned Advocate for the appellant canvassed submissions only with respect to the substantial question of law relying on Section 53-A of the Act, framed vide order dated 04.08.2025.

5. The appeal has a chequered history. The appellant is the original defendant. She attempted to enter into an agreement to sale with respect to the suit property, which is an agricultural land, on 14.05.1974. Thereafter, she filed a suit for specific performance of contract being RCS No.145 of 1979. The said suit was partly decreed vide judgment and decree dated 06.04.1983. The relief of specific performance of contract was refused and instead, decree for refund of consideration was passed in favour of the appellant. The appellant challenged the said decree by filing an appeal being RCA No.75 of

1984, which came to be dismissed vide judgment and decree dated 21.02.1989. Second Appeal preferred by the appellant bearing Second Appeal No.303 of 1989 also came to be dismissed on 04.03.2008.

6. The appellant was placed in possession of the suit property under the agreement dated 14.05.1974. The appellant filed a suit being RCS No.68 of 2009 (Old RCS No.64 of 2008), claiming a declaration of ownership by way of adverse possession and a decree for perpetual injunction against forcible dispossession. The said suit was partly decreed in favour of the appellant vide judgment and decree dated 28.04.2011. The learned Trial Court granted a decree for perpetual injunction restraining the respondents from taking forcible possession of the suit property from the appellant. However, the prayer for declaration of ownership by way of adverse possession was refused. The appellant preferred an appeal being RCA No.30 of 2011, which was also dismissed vide judgment and decree dated 23.02.2012.

7. In this backdrop, the present respondents filed a suit for possession with respect to the suit property being RCS No.10 of 2012. The learned Trial Court has decreed the said suit vide judgment and decree dated 30.08.2013. The appellant thereafter filed an appeal

being RCA No.125 of 2013, which came to be dismissed vide judgment and decree dated 24.02.2021. The present second appeal is filed challenging the said concurrent decrees for possession. As stated above, the appellant has given up challenge to the decrees on the substantial questions of law framed vide order dated 16.11.2022 and has challenged the decrees on the basis of substantial question of law framed vide order dated 04.08.2025.

8. Learned Advocate for the appellant contends that the fact that the appellant was placed in possession of the suit property pursuant to agreement of sale dated 14.05.1974, is not in dispute. He contends that the relief for specific performance of contract was refused in RCS No.145 of 1979, only on the consideration that the respondents had no other land for cultivation.

9. Learned Counsel for the appellant states that the findings on the readiness and willingness are recorded in his favour by the learned Trial Court while deciding RCS No.145 of 1979. He, therefore, contends that the appellant was lawfully placed in possession of the suit property and was always ready and willing to perform his part of contract. He, therefore, contends that the suit for possession filed by the respondents ought not to have decreed by granting protection under Section 53-A of the Act to the appellant.

10. Per contra, learned Advocate for the respondents states that the appeal was preferred by the respondents against the decree passed in the suit for specific performance of contract. Learned Appellate Court has recorded a finding that the agreement of sale dated 14.05.1974, was not entered into by the predecessor of the respondents for any legal necessity and as such, it was not binding on the other co-parceners in the joint Hindu family. He, further, contends that, the appellant had filed RCS No.68 of 2009 (Old No.64 of 2008), seeking declaration of ownership by way of adverse possession. Learned Advocate contends that having filed a suit for declaration of ownership by way of adverse possession, the appellant cannot take a shelter under Section 53-A of the Act. Learned Advocate for the respondents, therefore, prays for dismissal of the present second appeal.

11. Heard rival submissions as aforesaid. Perused the record of the case with able assistance of the learned Advocates. It is undisputed that the respondents are owners of the suit property. The respondents are the original plaintiffs, who had filed a suit for possession based on title. In a suit for possession based on title, a decree for possession must normally be granted unless the plaintiff is unable to prove the title or the suit is barred by limitation. The ownership of the respondents cannot be disputed. The appellant

claims right over the suit property on the basis of agreement of sale entered into with the predecessor of the respondents. A suit for possession based on title is governed by Article 65 of the Limitation Act. Limitation of twelve years is provided for filing a suit for possession based on title. The limitation starts from the date on which the possession becomes adverse or hostile. Since the appellant is claiming protection of possession under Section 53-A of the Act, the suit cannot be said to be barred by limitation since the possession has not become adverse according to the appellant.

12. As regards Section 53-A of the Act, in the considered opinion of this Court, the protection under the said provision cannot be granted to the appellant since the appellant had filed RCS No.68 of 2009 (Old RCS No.64 of 2008), claiming ownership by way of adverse possession. In cases where a owner enters into an agreement to sale and delivers possession of the property in terms of an agreement, a suit for possession can be opposed by taking recourse to Section 53-A of the Act. A person who claims ownership by way of adverse possession cannot seek protection of possession under Section 53-A of the Act, having regard to the difference in the nature of possession in order to seek relief under the said provision. The substantial question of law framed vide order dated 04.08.2025, needs to be answered in favour of the respondents.

13. In light of the reasons above, the present second appeal stands dismissed.

[ROHIT W. JOSHI]
JUDGE

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