



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

SECOND APPEAL NO. 128 OF 2025

Sanjaybaba Dattatray Pandit **Vs.** Gulabrao Vishwanath Selokar

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. K. R. Lule, Advocate for appellant.

Mr. C. F. Bhagwani, Advocate for respondent.

CORAM : ROHIT W. JOSHI, J.

DATE : 16.09.2025.

- 1) Heard.
- 2) Notice was issued in the present Second Appeal
vide order dated 24.06.2025 on the following
substantial questions of law:-

I) Whether the trial Court as well as the first appellate Court were right in treating the appellant as served in wake of paper publication by the respondent despite of fact that Bailiff report reveals that the appellant is in America and was not in India?

II) Whether the learned first appellate Court erred in holding that respondent become owner by way of adverse possession in the teeth of the fact that the respondent came-up with a case that he started

cultivating land with permission of the appellant?

3) Vide order dated 18.08.2025, the appeal was ordered to be heard finally at the stage of admission with consent of parties. The appellant is the original defendant and the respondent is the original plaintiff. (Hereinafter, the parties will be referred to as 'plaintiff' and 'defendant'.)

4) The plaintiff had filed a suit, being Regular Civil Suit No. 62 of 2011, which came to be renumbered as Regular Civil Suit No. 38 of 2011, *inter alia*, seeking a declaration that he had become owner of the suit property by adverse possession. The suit property is an agricultural land bearing Survey No. 664, admeasuring about 2.72 H.R., situated at Village Tekadi, Tah. Parseoni, Dist. Nagpur.

5) It is the case of the plaintiff that the defendant, who was owner of the suit property, was not cultivating the same and the plaintiff had undertaken cultivation of the field from the year 1978-79. He contends that the defendant informed him that he was not interested

in cultivation of the suit property and allowed the plaintiff to use the suit property as the owner thereof from the year 1978-79. The defendant further told him that he may acquire ownership over the suit property with the passage of time on account of continuous possession and cultivation. The plaintiff has stated that he was making payment of land revenue for the suit property.

6) In view of the above pleadings, the plaintiff sought a declaration that he had acquired ownership over the suit property by adverse possession. The suit summons could not be served on the defendant through regular mode and were returned unserved, with an endorsement that the defendant was residing at USA. As per the bailiff's report, a watchman was found at the address of the defendant mentioned in the suit, who informed that the defendant had shifted to the USA. The bailiff report also indicates that the office of the defendant was located at the said address and one of his employees used to visit the office.

7) The defendant was served with the suit summons by news paper publication under Order 5, Rule 20 of the Code of Civil Procedure. The learned Trial Court recorded evidence of the plaintiff and other two witnesses examined by him. The learned Trial Court dismissed the suit vide judgment and decree dated 13.04.2012, observing that the possession of the plaintiff was not adverse. The learned Trial Court held that the possession of plaintiff was merely permissive.

8) Aggrieved by the dismissal of his suit, the plaintiff preferred first appeal, being Regular Civil Appeal No. 840 of 2012. The said appeal came to be allowed vide judgment and decree dated 21.06.2021. It will be pertinent to state that the defendant was proceeded ex-parte in the appeal, In the appeal also, the respondent could not be served through the regular mode, for the same reason and was served through newspaper publication under Order 5, Rule 25 of the Code of Civil Procedure.

9) The learned appellate Court has observed in paragraph 29 of the judgment that only because

defendant informed the plaintiff that he was not interested in cultivating the suit land and allowed the plaintiff to cultivate the same would not mean that the possession of plaintiff is permissive possession so as to dis-entitle him to claim ownership by adverse possession.

10) A major part of the judgment deals with evidence which shows possession of the plaintiff over the suit property from the year 1978-79. Thereafter, some judgments pertaining to the law relating to adverse possession are considered and in conclusion that plaintiff had acquired ownership by adverse possession is recorded in Paragraph 29 of the judgment.

11) The learned Appellate Court placed reliance on the judgment of Andhra Pradesh High Court in the matter of Maddisetti Venkata Rathnamma (died) by LR's....vs....Pasupuleti Radhakrishna Murthy and another reported in 2002(1) Civil Law Journal Page 107. In the said case the defendant was in possession of the suit property for a very long time. The plaintiff claimed that the defendant was his tenant, which the

defendant denied. The case of tenancy was disbelieved by the Trial Court as also by the learned First Appellate Court. The question before the Court was as to whether the possession can be said to be permissive even when the plaintiff had failed to prove the case of tenancy. In that view of the matter, the High Court has held that, in cases of longstanding possession, it was not necessary for the defendant to establish an express act of disputing the title of the plaintiff. It will be pertinent to mention here that the High Court has expressly stated that the opinion was being expressed in the peculiar facts of that case, where the plaintiff claimed that defendant's possession was permissive since he was in occupation of the suit property as a tenant and the case of tenancy could not be proved.

12) In the present case, however, the plaintiff has come up with a specific case that he was permitted by the defendant to cultivate the land. The plaint is absolutely silent with respect to the date or period from which, and the manner in which, the possession became hostile. In order to perfect title by adverse

possession, the possession must be hostile. Permissive possession, however long, cannot confer ownership upon the occupant of immovable property by adverse possession.

13) It is undisputed that the plaintiff started cultivating the suit property with the permission of the defendant. The plaintiff has not averred as to how or when his possession became adverse. The learned first Appellate Court has also not recorded any specific finding in this regard. The learned First Appellate Court has observed that merely because the defendant had allowed the plaintiff to cultivate his land will not mean that the possession of the plaintiff was permissive. This observation by the learned first appellate Court which is the foundation of the decree, is clearly unsustainable, being contrary to the settled legal principles with respect to adverse possession.

14) In the considered opinion of this Court, the possession of the plaintiff is only permissive, as rightly held by the learned Trial Court. The judgment of the learned First Appellate Court is clearly unsustainable

and decree drawn on the basis of such judgment is liable to be quashed.

15) For the reasons recorded above, the substantial questions of law relating to adverse possession needs to be answered in favour of the appellant/defendant and against the respondent/plaintiff.

16) Since the substantial question of law relating to the merits of the matter is answered in favour of the appellant, the other substantial question of law relating to service of summons is not decided.

17) The second appeal is therefore, allowed in the following terms:-

- i. The judgment and decree dated 21.06.2021, passed by the District Judge-4, Nagpur in Regular Civil Appeal No. 840 of 2012, is quashed and set aside and judgment and decree dated 13.04.2012 passed by the learned Civil Judge, Junior Division, Parseoni, District Nagpur in Regular Civil Suit No. 38 of 2011 (old Regular Civil Suit No. 62 of 2010) is confirmed.

ii. Regular Civil Suit No. 38 of 2011 (old Regular Civil Suit No. 62 of 2010) stands dismissed.

(ROHIT W. JOSHI, J.)

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