



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 28 OF 2026

Ashok Govindrao Kadam
VERSUS
Subhash Govindrao Kadam

Mr. G. V. Wani h/f Ms. S. N. Devmane, Advocate for appellant

CORAM : R. M. JOSHI, J.
DATE : 08th JUNE, 2026

PER COURT :-

1. This Second Appeal takes exception to the judgment and order dated 27.03.2025 passed in Regular Civil Appeal No. 90 of 2016.
2. Heard learned Counsel for Appellant. Perused appeal memo and impugned judgment of the First Appellant Court and the Trial Court.
3. It is a case of the appellant/original plaintiff that the plaintiff is the owner and is in possession of land admeasuring 60 R from Gat No. 861. It is contention of the plaintiff that on the basis of oral partition, the said land came to his share. This contention of the plaintiff is accepted by defendant No. 1 but resisted by defendant Nos. 2 and 3. It is the case of defendant Nos. 2 and 3 that the plaintiff got only 19 R land in the partition effected between the parties. It is specifically disputed that the plaintiff is having possession of 60 R land as claimed by him.

4. Plaintiff examined himself. Other than his oral evidence, he relied upon revenue entries in respect of subject land. Learned Trial Court dismissed the suit on the ground that the plaintiff has failed to prove his possession over 60 R land. The appeal preferred by the plaintiff was unsuccessful.

5. Learned Counsel for appellant/original plaintiff submits that the original defendant No. 1 has admitted the claim of the plaintiff. It is his submission that the evidence of the plaintiff is sufficient to show that he was in possession of 60 R land and as such he was entitled to seek declaration and injunction against defendant Nos. 2 and 3. He further argued that defendant Nos. 2 and 3 though filed written statement failed to lead any evidence in support of their contention.

6. This is an appeal under Section 100 of the Code of Civil Procedure. In order to maintain the appeal, the appellant has to show substantial question of law being involved therein. As far as pleadings are concerned, all defendants have not accepted the case of the plaintiff. The contesting defendant i.e., defendant Nos. 2 and 3 have specifically denied the claim of the plaintiff and has categorically contended about he being given 19 R land only in the partition. Once the contention of the plaintiff is denied by the contesting defendants, the initial burden is upon the plaintiff to prove that he is in possession of 60 R land.

7. Admittedly, except examining himself, plaintiff has not led any evidence in order to show he is in actual possession of 60 R land. Needless to say that unless plaintiff discharges the initial burden, the onus does not shift upon the contesting defendants to prove anything. The Trial Court has rightly taken into consideration the evidence on record and has rejected the claim of the plaintiff about declaration and injunction in respect of suit land. The findings recorded by the Trial Court are consistent with the evidence on record and by no stretch of imagination it would be called as perverse. Consequently no substantial question of law is involved in this appeal.

8. Hence, appeal stands dismissed.

(R. M. JOSHI, J.)

B. S. Joshi