



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 206 OF 2026

1. ARUN BAHIRU KHADE
2. PRALHAD BAHIRU KHADE (DIED)
- 2-A. INDRABAI PRALHAD KHADE
- 2-B. MEGHA SHIVAJI BHANGARE
- 2-C. LALITA VIKAS BHANGARE
- 2-D. HARSHADA SAHIL DINDALE
- 2-E. BHAUSAHEB PRALHAD KHADE
3. BAHIRU BHAU KHADE (DIED)

Versus

1. SANTU WALU ALIAS BALU BHOIR
2. NARAYAN LAKSHMAN KHADE (DIED)
3. NIVRUTII BHIKA KHADE (DIED)

* Advocate for the Appellants : Mr. Shaikh Kayyum Najir

CORAM : MEHROZ K. PATHAN, J.

DATE : 16th APRIL 2026

ORDER :

1. The Second Appeal is filed by the Appellants challenging the judgment and decree dated 16.01.2026 passed by the District Judge-1, Sangamner, Dist. Ahilyanagar in Regular Civil Appeal No.10/2007, whereby the District Judge-1 allowed the RCA No. 10/2007 and set aside the judgment and decree dated 08.12.2006 passed by the Civil Judge, Junior Division of Akole in RCS No. 33/1999 and thereby dismissed the counter claim of the Appellants.

. The Plaintiff/Santu Bhoir, has filed a suit for measurement and boundary demarcation along with a mandatory injunction, registered

as RCS No. 33/1999, concerning the suit property bearing Survey No. 28/1, admeasuring 2H 6R, situated at Bhandardhara, Taluka Akole, District Ahilyanagar. The Appellants/Defendant Nos. 1 to 3 have encroached upon a portion of the suit property by laying a pipeline and constructing a temporary hut illegally. Accordingly, the Plaintiff has also prayed for removal of the pipeline and hut from the suit property and for vacant possession of the said land.

2. The Defendant No.1 filed his written statement denying that he had constructed any temporary structure or laid any pipeline in the suit property. He further claimed that he has been residing in the suit property for the past 27 years and is in possession of the western half portion thereof. On that basis, he asserted ownership of the said portion, alleging that the Plaintiff is attempting to dispossess him. Accordingly, the Defendant filed a counterclaim seeking a declaration of ownership over the western half portion of the suit property, along with a perpetual injunction against the Plaintiff, and prayed for decreeing the counterclaim while dismissing the Plaintiff's suit..

. The learned trial Court dismissed the suit filed by the Plaintiff/Santu Bhoir, and also rejected the Defendant's claim for declaration in the counterclaim. However, the Trial Court decreed the counterclaim only to the limited extent of granting a perpetual injunction restraining the Plaintiff from obstructing the possession of Defendant Nos. 1 to 3 over the western half portion of the suit property.

3. The Appellants/Defendant Nos. 1 to 3, namely Bahiru Khade, Arun Khade, and Pralhad Khade, filed a First Appeal (RCA No. 10/2007) to the limited extent of challenging the Trial Court's refusal to declare them as owners of the western half portion of the suit property. The learned First Appellate Court, by its judgment dated 16.01.2026, rejected the appeal filed by the Appellants. The Trial Court's rejection of the counterclaim seeking declaration of ownership over the western half portion of the suit property was upheld by the First Appellate Court. However, the part of the counterclaim that had granted a perpetual injunction restraining the Plaintiff from disturbing the Defendants' possession of the western half portion was set aside. Consequently, the counterclaim filed by the Defendants/Appellants in RCS No. 33/1999 stood rejected by the First Appellate Court.

. The Appellants have thus filed the present Appeal thereby challenging the judgment of the First Appellate Court as well as the learned trial Court.

4. After hearing the learned Counsel for the Appellants, Mr. Shaikh Kayyum Nazir, and upon perusal of the judgments of the learned Trial Court as well as the First Appellate Court, the following substantial question of law appears to arise in the present appeal:

Whether the findings recorded by the trial Court and the First Appellate Court are perverse to the evidence led by the Defendants as well as the Plaintiffs ?

5. The perusal of the record would show that both parties claimed

possession over the suit property. The Plaintiffs contended that while they were in possession of the suit property, the Defendants had constructed a hut on the western portion, laid a pipeline, and kept one outlet open, thereby necessitating a prayer for mandatory injunction. The Defendants, on the other hand, asserted that they had been in possession of the western portion of the suit property since 1972, had installed an electric motor drawing water from the Parvata River in 1994, and had constructed a house thereon. Accordingly, the Defendants/Appellants filed a counterclaim seeking declaration of ownership by adverse possession. The record further shows that the Plaintiffs admitted that the Defendants had constructed a house on the western portion of the suit property, as reflected in the statement given to the Tahsildar at Exhibit 107, wherein possession of the western half portion was acknowledged. The cross-inspection record from 1972–1973 to 1987–1988 also stands in the name of Defendant No. 1. The order passed by the Tahsildar was confirmed by the SDO and Collector, though later set aside by the Additional Commissioner solely on the ground that the possession was illegal. Nevertheless, the fact remains that the Defendants were in possession of half portion of the suit property, with House No. 174 standing there since 1994, where the Defendants claimed to have constructed a temporary hut. It was therefore found that the Plaintiffs were in possession of the eastern half portion of the suit property, and accordingly their claim came to be rejected. As regards the Defendants' counterclaim for declaration of ownership of the western half portion, the Trial Court recorded a specific finding under Issue No. V that the Defendants had

failed to prove ownership of the suit property by adverse possession.

6. The learned trial Court held that the Defendant had taken a plea of adverse possession, claiming to be in settled possession of the western half portion of the suit property for more than 27 years. However, the Defendant also pleaded that he had cared for Sarubai in her old age after the death of Rama, and that out of affection, Sarubai had given him the western half portion of the suit property in 1972. He further claimed to have paid Rs. 10,000/- to Sarubai during her lifetime, discharged a debt of Rs. 1,500/- owed by Rama, and paid Rs. 500/- towards the western half portion. Although this plea was raised, no evidence was adduced, and therefore he failed to establish ownership of the property. The other plea of adverse possession runs contrary to the aforesaid plea, since he simultaneously claimed to have paid consideration to Sarubai and to have been permitted by her to occupy the premises. Thus, the learned Trial Court rightly refused to declare the Defendant as the owner of the suit property.

7. The learned First Appellate Court rightly held that the Appellants had failed to prove that Defendant Nos. 1 to 3 were the rightful owners of the western half portion of the suit property. It further held that the Defendants had failed to establish that the Plaintiffs were disturbing or obstructing their possession. Accordingly, the Appellate Court rightly refused to decree the counterclaim filed by Defendant Nos. 1 to 3, who are the Appellants herein. I find no error

committed by the learned Trial Court or the First Appellate Court in dismissing the First Appeal filed by Defendant Nos. 1 to 3 against the judgment dated 08.12.2006 passed by the Civil Judge, Junior Division, Akole in RCS No. 33/1999. The substantial question of law on the point of perversity is therefore answered accordingly. The findings recorded by both Courts do not suffer from any perversity. The Appellate Court has rightly held that the Appellants failed to establish their counterclaim and has correctly reversed the finding to the extent of permanent injunction in favour of Defendant Nos. 1 to 3 granted by the trial Court. I do not see any error in the judgment of the Appellate Court. No other substantial question of law arises in the present appeal. The appeal filed by the Appellants/ Original Defendant Nos. 1 to 3 is therefore dismissed.

[MEHROZ K. PATHAN]
JUDGE

Najeeb..