

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 84 OF 2026

Mallu Kirappa Alagikar
VERSUS
Collector, Sangli District Sangli And Ors

WITH
INTERIM APPLICATION (STAMP) NO. 3284 OF 2026
IN
SECOND APPEAL NO. 84 OF 2026

Mallu Kirappa Alagikar
VERSUS
Collector, Sangli District Sangli

...
Mr. Nageshrao Chavan, Advocate for Appellant.
Mr. Anand Subhash Shalgaonkar, AGP for the Respondent-State.
...

CORAM : SACHIN S. DESHMUKH, J.
DATE : 30th APRIL, 2026.

P. C. :

1. The appellant raises an exception to the order dated 29.01.2026 rendered by the learned Ad-hoc District Judge-2, Sangli in Regular Civil Appeal No.59 of 2019 arising out of the order dated 07.01.2019 passed by the learned 5th Joint Civil Judge Junior Division, Sangli in Regular Civil Suit No.804 of 2012.

2. The appellant is the original Plaintiff while the Respondents are the original Defendants. Hereinafter the parties shall be referred to as their original status.
3. The Plaintiff had instituted Regular Civil Suit No.804 of 2012 against the Defendants seeking perpetual injunction thereby restraining the Defendant No.3 from removing *Tapari/Stall* bearing No.171 situated near the S.T. bus stop Sangli on eastern side of Sangli-Kolhapur Road. (Hereinafter referred to as “Suit Property”).
4. It is the contention of the Plaintiff that the Plaintiff was in a settled possession of the suit property and inherited the business from his father since over 25 years. The Defendant No.3 acknowledging same had granted permissive possession. However, on 06.07.2012, Defendant No.2 issued a notice to the Plaintiff directing removal of the Stall for public purposes. Earlier as well, the Plaintiff had instituted Regular Civil Suit No.16 of 2008 against Municipal Corporation/Defendant No.3, wherein perpetual injunction was granted in his favour.
5. In response, the Defendants opposed the suit by filing their written statement contending that the suit was barred for non joinder of necessary parties, lack of proper description of the suit

property, the existence of Stall hindered the public interest and the Plaintiff had no right upon the same. However, the suit came to be dismissed by the Judgment and Decree dated 07.01.2019.

6. Aggrieved by the same, the Plaintiff preferred Regular Civil Appeal No.59 of 2019 before the District Court which was contested by the Defendants and the same came to be dismissed by the Judgment and order dated 29.01.2026. Consequently, the Appellant is before this Court.

7. In the backdrop of the aforesaid facts, learned counsel for the Appellant/Plaintiff submits that both the Court have erred while passing the judgments under challenge. Despite the earlier allotment of the suit property in favour of the appellant, the Defendant ought not to have acquired the said property. The appellant had regularly paid the rent and taxes to the Defendants. As such, the right of appellant in relation to the suit property ought to have been held. Hence, prayed to allow the Appeal.

8. Learned AGP for the Respondent-State has opposed the appeal and supported the concurrent findings under challenge.

9. Having heard the submissions from both the sides and upon perusal of the material on record indicates that the Plaintiff was

granted permissive possession in relation to the suit property. Moreover, the authorities have carried due procedure and have sent notice to the Plaintiff for encroachment before carrying out any action against him.

10. Merely because the plaintiff is in possession of a suit property for a considerable period does not make him entitled to claim ownership by adverse possession, specifically, when the possession is permissive in nature. Furthermore, there are certain discrepancies regarding the original allotment of suit property as claimed by the Plaintiff in the name of his father. Also, as admitted by plaintiff, the alleged stall was on earlier occasion shifted from the disputed spot. As such, the Plaintiff cannot claim settled possession.

11. Nevertheless, this Court while considering the Second appeal is restricted only to the question of law, in absence of same, present appeal does not warrant consideration.

12. In view of the aforesaid discussion, and considering the concurrent findings rendered by the Courts below coupled with the fact that in absence of substantial question of law in the appeal, I am of the considered opinion that the appeal sans merit.

13. Resultantly, the same stands **dismissed**.

14. In view of dismissal of appeal, Interim Application does not survive and the same stands disposed of.

[SACHIN S. DESHMUKH, J.]