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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 619 OF 2016
WITH
CIVIL APPLICATION NO. 520 OF 2014
WITH
INTERIM APPLICATION NO. 13050 OF 2024
WITH
INTERIM APPLICATION NO. 6301 OF 2024
WITH
CIVIL APPLICATION NO. 519 OF 2014
WITH
INTERIM APPLICATION NO. 13047 OF 2024
IN
SECOND APPEAL NO. 619 OF 2016**

**Ranjana Sanjay Dhamdhare and Anr ... Appellants/Applicants
vs.
Tukaram Ranu Hargude and Others ... Respondents**

**WITH
SECOND APPEAL NO. 430 OF 2024
WITH
CIVIL APPLICATION NO. 1204 OF 2014**

**Tukaram Ranu Hargude ... Appellants/Applicants
vs.**

Ankush Rambhau Hargude and Ors ... Respondents

**Mr. Ranjit Thorat, Senior Advocate a/w. Mr. Sandeep S. Salunkhe
for the Appellants.**

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Mr. A.B. Tajane(through VC) a/w. Mr. Y.A. Tajane for Respondent Nos. 2 to 5.

CORAM : GAURI GODSE, J.

DATED : 18th MARCH 2026

ORDER:

1. Second Appeal No. 619 of 2016 is filed by the purchasers from the original plaintiff, praying for a decree for possession after removal of encroachment on the ground of title. By filing a separate Civil Application No. 520 of 2014 the applicants seek leave to file an appeal. Second Appeal No. 430 of 2024 is filed by the original plaintiff.

2. Both the second appeals are filed to challenge the judgment and decree passed by the first appellate court, reversing the trial court's decree granting a declaration and possession in favour of the plaintiff. The plaintiff had filed the suit on the ground that he is the Manager of the joint family consisting of his father and other family members. He therefore filed a suit for removal of encroachment and possession by seeking a declaration that the plaintiff is the owner of the property. The trial court had decreed the suit, accepting the plaintiff's title over the suit property and by accepting the plaintiff's contention that the defendants had

encroached upon the suit property. The first appeal was filed by defendant nos. 2 to 5. The appellate court reversed the trial court's decree by holding that no document was produced on record to prove the plaintiff's title over the suit property.

3. Learned senior counsel appearing for the appellants submits that during the pendency of the first appeal, the plaintiff had executed the registered sale deed transferring the suit property in the name of the appellants in Second Appeal No. 619 of 2016. Hence, the application was filed to produce additional evidence regarding the sale deed executed by the plaintiff. He submits that though the fact that the third party rights created by the plaintiff were brought on record, the name of the plaintiff was not substituted. He further points out the observation of the first appellate court with reference to the sale deed executed by the plaintiff that it would not be necessary to consider the right, title, and interest over the suit property when the plaintiff had sold the property during the pendency of the appeal.

4. Learned senior counsel for the appellants submits that the mutation entries produced on record supported the plaintiff's case that the plaintiff was in possession as the owner of the property. He relies upon the order passed in the application filed by defendant

no.2 before the revenue authority under Section 70(b) of the Maharashtra Tenancy and Agricultural Land Act, 1948 ("**Tenancy Act**"), seeking a declaration that he was the tenant of plaintiff's father. The application was rejected by the revenue authority on 21st March 2009. The copy of the order is annexed to the application filed for leave to file an appeal in this court. He therefore submits that when defendant no.2 had filed an application under Section 70(b), admitting that he was a tenant of plaintiff's father, the defendants were estopped from disputing the plaintiff's title. He therefore submits that the second appeals would require consideration on the ground that the issue of ownership was not correctly decided by the first appellate court and that the defendants were estopped from challenging the plaintiff's title in view of the application filed by defendant no.2 under Section 70(b) of the Tenancy Act. He therefore submits that the second appeal would raise substantial questions of law in view of Section 116 of the Indian Evidence Act and compliance with the provisions of Article 65 and 66 of the Limitation Act, which was not considered by the first appellate court. He submits that the second appeals would also raise a substantial question of law on the ground that the first appellate court, without deciding the issue of title and only by considering the issue of possession, dismissed the suit, which was

filed on the ground of title.

5. I have perused the papers of the second appeals. The application filed by the subsequent purchaser for seeking leave to file an appeal is on the ground that during the pendency of the first appeal, the plaintiff had transferred the property in the name of the applicants. However, no such application was filed before the first appellate court for substituting the name of the purchaser in place of the plaintiff.

6. With reference to the sale deed executed during the pendency of the first appeal, the appellate court has observed that, since the title was transferred by the plaintiff during the pendency of the appeal, it was not necessary to consider the right, title, and interest over the suit property with regard to the sale deed. However, the first appellate court has examined the pleadings and evidence on record with reference to the plaintiff's claim of title over the suit property. After referring to the evidence on record, the first appellate court disbelieved the plaintiffs' contention of being in possession for the last three and a half years prior to the filing of the suit. The plaintiff's contention regarding payment of the amount to the defendants for handing over possession is also discussed by the first appellate court. The documents in support of the said

contention are not accepted as it was not duly proved in evidence. Hence, the first appellate court has refused to accept the plaintiff's title and possession over the suit property.

7. The extract of the consolidation record and the 7/12 extract were not part of the evidence. Hence, the first appellate court held that in the absence of any evidence to prove the plaintiff's title and possession, the trial court's decree for possession would not be sustainable. Even in this second appeal, no evidence is shown to support the plaintiff's contention of title and possession over the suit property. Thus, I see no reason to interfere in the findings recorded by the first appellate court, which is the last fact finding court.

8. The application under Section 70(b) of the Tenancy Act annexed to the application for leave to file an appeal is an application by defendant no.2 against the plaintiff's father. The filing of any such application by defendant no.2 against the plaintiff's father cannot be accepted as an admission of title of the plaintiff, for the first time in these second appeals. Hence, the order passed under Section 70(b) of the Tenancy Act, relied upon in the Civil Application No. 520 of 2014, cannot be a ground to interfere with the findings of fact recorded by the first appellate court. Hence, none of the grounds raised on behalf of the appellants would require any

consideration by this court, as the same do not raise any question of law.

9. The second appeals do not raise any other substantial question of law.

10. The civil application filed by the purchaser seeking leave to file an appeal is based on the transfer of title during the pendency of the first appeal; hence, the transaction is hit by the provisions of Section 52 of the Transfer of Property Act. Hence, there is no reason for granting leave to file an appeal to the purchaser. Hence, the Civil Application No. 520 of 2014 is rejected.

11. Both the second appeals are dismissed.

12. Any pending applications are disposed of as infructuous.

(GAURI GODSE, J.)