



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.220 OF 2025

APPELLANT

Ori. Plaintiff
on R.A.

- :-** 1. Janardhan Maroti Katkade,
Aged 67 years, Occu: Agriculturist,
R/o Navargaon, Tah. Wani, Distt.
Yavatmal,
2. Ruda Janardhan Katkade,
Aged 35 years, Occu: Agriculturist,
R/o. Navargaon, Tah. Wani, Distt.
Yavatmal

*Amendment carried out as
per courts order dtd.19.11.2025*

..VERSUS..

RESPONDENTS

Ori. Defs. On R.A.

- :-** 1. Smt. Tarabai Sadashiv Thawari
Aged 73 years, Occu: Household
2. Bhimrao Sadashiv Thawari
Aged 46 years, Occu: Agriculturist
3. Vikas Sadashiv Thawari
Aged 43 years, Occu: Agriculturist
4. Ramesh Sadashiv Thawari
Aged 72 years, Occu: Agriculturist
All R/o Navargaon, Tah. Wani, Distt.
Yavatmal.

Ms. Aparna Jha, Advocate h/f. Mr. A. A. Dhawas, Advocate for Appellants.
Mr. P. A. Jibhkate, Advocate for the Respondents.

CORAM : ROHIT W. JOSHI, J.

DATE : 18.03.2026

J U D G M E N T :

1) The present appeal takes exception to judgment and decree dated 06.07.2019 passed by the learned Civil Judge, Junior Division, Wani and judgment and decree dated 08.05.2025 passed by the learned District Judge-1, Kelapur.

2) Appellant is the original plaintiff and respondents are original defendants. The parties will hereinafter be referred as “plaintiff” and “defendants”.

3) The present appeal is preferred by plaintiff in Regular Civil Suit No.3 of 2015. The suit was filed seeking possession by removal of encroachment. It is not in dispute that the encroachment to the extent of 0.29 H.R. is proved.

4) The learned Trial Court has however dismissed the suit on the ground that the plaintiff had knowledge about possession of the defendant over the suit property since the year 2001 and as such the suit for possession filed in the year 2015 was barred by limitation. The learned Trial Court has held that suit for possession ought to have been filed within a

period of 12 years from the date of hostile possession in view of Article 65 of the Limitation Act.

5) Aggrieved by the dismissal of the suit, the plaintiff preferred first appeal being Regular Civil Appeal No.34 of 2019, which is also dismissed on the same ground vide judgment and decree dated 08.05.2025 passed by the learned District Judge-1, Kelapur.

6) The following substantial question of law was framed in the appeal vide order dated 19.11.2025.

“In the absence of any evidence regarding title being perfected by adverse possession, can a suit for removal of encroachment and possession based on title be said to be barred by limitation”

7) Vide order dated 20.01.2026, parties were put to notice that the appeal would be heard finally on the aforesaid substantial question of law at the admission stage. The appeal is taken up for final hearing at admission stage today.

8) The learned advocate for the appellant contends that the knowledge of encroachment to the plaintiff by itself will not amount to the possession of defendant becoming

adverse. He contends that unless the defendant contends that although the plaintiff is owner of the suit property, yet the defendant is occupying the same disregarding the title of the plaintiff only then the possession can be set to be adverse. The learned advocate draws attention to paragraph 14 of the written statement and contends that the said pleadings taken on their face value do not meet the essential ingredients of adverse possession. She further contends that in a suit for possession, once the plaintiff proves his title, decree of possession must normally follow unless the defendant proves that title is perfected by way of adverse possession, or some other right to hold possession.

9) The learned advocate for the respondents /original defendants supports the judgments. He contends that there is a clear admission in the cross-examination of the plaintiff that the defendant was in possession of the suit property for a period of around 7 to 8 years prior to issuance of suit notice at Exhibit 33, which was issued in the year 2009. The learned advocate contends that since possession of defendant since the year 2001 is within knowledge of the plaintiff, the

possession had become hostile since then.

10) I have perused the written statement and other material on record. The proposition that unless the defendant makes out a case of adverse possession, suit for possession by the plaintiff must be decreed once the title is proved cannot be disputed. The only question which falls for consideration is as to whether pleadings in paragraph 14 of the written statement are sufficient to hold that the defendants claimed hostile possession against the plaintiff.

11) Perusal of the written statement will indicate that the defendants merely contended that they were in possession of the property to the knowledge of plaintiff since the year 2001. The pleading taken on its face value is not sufficient to make out a case of adverse possession. Mere fact that the defendants were in possession of the suit property and that the plaintiff was aware about the same will not be sufficient to hold that the limitation for filing a suit for possession under Article 65 commenced from the said date. The defendants should have pleaded and proved that the day on which the plaintiff came into knowledge about their

possession over the suit property, they claimed to be in possession as owners, disregarding the ownership of the plaintiff. The possession will become adverse only when the defendants claim to be in possession as owners, disregarding the ownership of plaintiff. Mere possession of land for a period exceeding 12 years will not mean that the defendants have perfected their title over the suit property by adverse possession. Unless the defendants perfect the title by adverse possession, suit for possession based on title cannot be said to be barred by limitation. The defendants never claimed that on the date on which encroachment was detected by the plaintiff on measurement of the suit property, they asserted right to be in possession of the suit property as owners, disregarding the ownership of the plaintiff. Such is not their pleading in the written statement. The possession of defendants therefore cannot be said to be hostile or adverse even if the statement in the written statement is taken on its face value.

12) In view of the aforesaid, the findings recorded by both the learned Courts that the suit is filed beyond the

prescribed period of limitation under Article 65 cannot be sustained. The substantial question of law is, therefore, answered in favour of the appellant/plaintiff and against the respondents/defendants.

13) Second Appeal is, therefore, **allowed** in the following terms:-

i. Judgment and decree dated 06.07.2019 passed by the learned Civil Judge, Junior Division, Wani in Regular Civil Suit No.3 of 2015 and judgment and decree dated 08.05.2025 passed by the learned District Judge-1, Kelapur in Regular Civil Appeal No.34 of 2019 are quashed and set aside. The civil suit is decrees in terms of prayer clause 1 which is as under:-

“1. The suit of plaintiff for possession of enchorached area of OH-29R, Land out of Gut no.97/1 as shown in measurement map of dtd-18-03-2014 enclosed along with the plaint and damages of Rs-10,000 /- per year from the year of filing of the suit till the

delivery of possession and for permanent injunction be decreed with cost of the suit.”

- ii. The defendants are directed to handover possession of the suit property bearing Gat No.97/1 admeasuring 0H.29R to the plaintiff.
- iii. Parties to bear their own costs.

14) Learned advocate for the respondents states that the respondents have filed a suit for declaration of ownership and injunction against the appellants and that findings recorded should not come in their way in prosecuting the said suit. Whether the present judgment will operate as res judicata or not will be a question open for the learned Courts to decide in the suit filed by the respondents.

(ROHIT W. JOSHI, J.)

Ταπηγά...