



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

SECOND APPEAL NO.324 OF 2018

APPELLANTS
 (Ori Plaintiffs on RA)

:- Shri Rajaram S/o Nathopant Patwari,
 through his legal heirs, since deceased
 during trial

- 1) Smt. Suman Wd/o Rajaram Patwari
 Aged about 75 years, Occ: Housewife,
- 2) Shri Mohan S/o Rajaram Patwari,
 Aged about 53 years, Occ: Service.
- 3) Shri Nagesh S/o Rajaram Patwari,
 Aged about 42 years, Occ: Business.
 All R/o 712, Buty Plot, Dharampeth
 Nagpur.
- 4) Sau. Vasundhara Chandrashekar
 Nagdeo (Dead) Aged about 45 years,
 Occ: Housewife R/o Rangaripura, Wani,
 Distt. Yavatmal
- 4) Sau. Vasundhara Chandrashekar
 Nagdeo Deceased Through L.Rs.
- 4-a) Shri. Chandrashekar Manoharao
 Nagdeo, Aged 55 yrs Occ: Service.
- 4-b) Rushikesh Chandrashekar Nagdeo,
 Aged 29 yrs, Occ: Service.
- 4-c) Parag Chandrashekar Nagdeo,
 Aged 24 yrs. Occ: Student.
 All above R/o Rangaripura, Wani, Dist.
 Yavatmal.
- 4-d) Vrushali Ritesh Deshpande
 Aged 26 Yrs. Occ: Housewife,
 R/o "Vitthal Mandir", Mahur.

Amendment as per
 Court's order dated
 02.07.2019

..VERSUS..

RESPONDENTS :-

(Ori. Defendants on RA)

- 1) Smt. Saroj Wd/o Vinayak Patwari
Aged about 68 years, occ: Service
- 2) Ku. Pratiksha d/o Vinayak Patwari
Aged about 42 years, Occ : Not known
- 3) Shri Pratik S/o Vinayak Patwari
Aged about 40 years, Occ :Service.
All 1 to 3 r/o Plot No.204, 205 Dey's
Apartment, Bajaj Nagar, Nagpur.
- 4) Shewalkar Developers Pvt. Ltd. Laxmi
Bhavan Chowk, WHC road, Nagpur
through Shri Ashutosh Ram Shewalkar.
- 5) Shri Wasudeorao Deshpande
Through his legal heirs, since deceased.
- 5-A) Smt. Manda Vasudeorao Deshpande
Aged about 73 years,
R/o Buty Plot, Dharampeth, Nagpur.
- 5-B) Smt. Sulbha Annaji Joshi,
Aged about 62 years, R/o C/o Shri
Umesh Ghuse, P. No.64, Vitthal Nagar
No.1, Near Durga Mandir, Hudkeshwar
Nagar, Nagpur.
- 5-C) Shri Deepak Vasudeorao Deshpande
Aged about 56 years,
R/o 301, Samruddhi Sagar Apartment,
Near Amladi Canal, Raipur.
- 5-D) Smt. Shaila Padmakar Karanjkar
Aged about 60 years,
R/o Sahayog Building, Gokul Colony
Javahar Nagar, Akola.
- 5-E) Sau. Vrushali Vinodrao Badge
Aged about 58 years,
R/o P.No.712, Buty Plot, Dharampeth,
Nagpur.
- 5-F) Sau. Anjali Dnyaneshwarrao Chaudhary

Aged about 42 years. R/o Shiryogi apartment, Jaitala Road, Nagpur.

5-G) Shri Chandrashekar Wasudeorao Deshpande, Aged about 50 years, R/o Buty Plot No.712, Dharampeth, Nagpur.

6) Nagpur Improvement Trust through its Chairman, Tq. And Dist. Nagpur.

Mrs. Smita Deshpande, Advocate for Appellants.

Mr. M.S. Abbasi and Mr. Varad Naik, Advocate for Respondent Nos.1 to 3.

Mr. Shyam Dewani, Advocate for Respondent No.4.

Mr. Girish A. Kunte, Advocate for Respondent No.12.

CORAM : ROHIT W. JOSHI, J.

DATE : 18/04/2026

JUDGMENT :

1. The present appellants are legal representatives of original plaintiffs, late Rajaram Nathopant Patwari in Regular Civil Suit No.1226 of 2004. The suit was filed on 15.03.1989 in *forma pauperis* vide M.J.C. No.53 of 1989. The said application was allowed and subsequently the suit was registered as Regular Civil Suit No.1226 of 2004. The plaintiff has prayed for declaration of ownership over the suit property which described in Schedule A of the plaint. Schedule A gives the description of entire suit property. Schedule B, C and D provides description of three different portion of the suit property. The plaintiff has also sought declaration in the

alternative that he has acquired ownership of portion of the suit property described in Schedule C by adverse possession. The plaintiff prayed for a decree of perpetual injunction restraining the defendant Nos.1 to 4 from disturbing his possession over portion of suit property described in Schedule C. He also prayed for decree of eviction and possession against the defendant Nos.1 to 3 with respect to portion of the suit property described in Schedule B. He sought declaration that he was landlord of portion of suit property described in Schedule D which was in occupation of defendant No.5 at the relevant time. The defendant No.5 is deleted from the array of parties subsequently. The description of suit property is as under:-

SCHEDULE "A"

Single storied house with some portion double Storied on the plot No.712 Municipal Corporation No.79 (61*4 Old) Circle No.20-D-B, Buty Plots No.2, Dharampeth, Nagpur-440010. The area of the plot is 3600 Sq.ft. Consisting of 9 rooms and which includes the portion of the houses detailed in Schedule B, C and D.

The boundaries are as under:-

To the East	-	Main Road – 40'-0" wide
To the West	-	Back side Road 30'-0" wide
To the North	-	Puranik's Bunglow H.No.613

To the South - Sane's flats.

SCHEDULE "B"

The portion is occupation of defendant No.1 consisting of three rooms with separate bath & Latrine. Double storied towards front side of the house. Area 840 Sq.feet.

The boundaries are as under:-

To the East	-	40'-0" wide Road
To the West	-	Open space & House of plaintiff
To the North	-	3 Rooms block in Occupation of Deshpande Tailor
To the South	-	Sane's flats.

SCHEDULE "C"

Three rooms admeasuring 367 Sq.feet in possession of plaintiff.

The boundaries are as under:-

To the East	-	Open space of about 10'-0" wide and then blocks of Defendant 1 & 4
To the West	-	Back side road of 30'-0" wide.
To the North	-	Puraniks Bunglow
To the South	-	Sane's flats.

SCHEDULE "D"

Three Rooms admeasuring 840'-0" Sq.feet.

To the East	-	Road -40'-0" wide
To the West	-	Open space & House of plaintiff.
To the North	-	Puraniks Bunglow
To the South	-	Three rooms of defendant No.1.

2. The defendants are widow and children of late Vinayak, younger brother of the plaintiff. The defendant No.4 has purchased the suit properties from defendant Nos.1 to 3 vide sale deed dated 31.03.1998.

3. The case of the plaintiff is that the suit property was owned by one Tapibai, who is maternal aunt of the plaintiff and deceased Vinayak (husband of defendant No.1 and father of defendant Nos.2 and 3). It is his case that late Tapibai had executed a Will dated 03.07.1958 bequeathing the suit property to Vinayak. The plaintiff contends that as per the Will after demise of Vinayak, the suit property would vest with the plaintiff as owner. Alternatively, a contention is raised that the plaintiff has become owner of the suit property described in Schedule C by virtue of adverse possession. The relevant pleadings with respect to adverse possession are incorporated in the plaint which are extracted herein below :-

“14. That without prejudice to aforesaid contention plaintiff has become the owner of the portion in his occupation by way of adverse possession since the plaintiff is in occupation of the same continuously for more than 30 years without interruption. Assuming but not admitting, the property willed to the husband of the defendant No.1, the plaintiff has also right and share in the said property as a legal heir to the estate and property of the deceased Smt. Tapibai Bhalerao.

The plaintiff is in possession of the portion of the suit house which is described in detail in Schedule C attached to the plaint.”

4. The suit came to be partly decreed by the learned 6th Joint Civil Judge Senior Division, Nagpur vide judgment and decree dated 02.08.2014. The learned Trial Court dismissed the prayer for declaration of ownership. However, the defendants were restrained from disturbing possession of the plaintiff over the suit property without following due process of law by passing a decree for perpetual injunction to that effect.

5. Being aggrieved by the said decree the plaintiff preferred appeal under Section 96 of the Code of Civil Procedure which came to be registered as Regular Civil Appeal No.363 of 2014. The said appeal came to be dismissed by the learned District Judge-13, Nagpur, vide judgment and decree dated 10.11.2017.

6. These concurrent decrees are subject of matter of challenge in the present second appeal. Vide order dated 19.11.2019, notice was issued in the appeal on the following substantial questions of law:-

“(i) Whether both the Courts below erred in interpreting the document of will which goes to the root of the case?

(ii) Whether both the Courts below failed to appreciate the plea

of adverse possession in proper perspective in view of the Article 65 of the Limitation Act?”

7. The appeal was heard initially on 07.05.2025. It was adjourned at behest of appellants to 18.06.2025. Again the hearing was adjourned to 10.07.2025 at the request of the appellants. Vide order dated 10.07.2025, the appeal was posted for final hearing on 23.07.2025 at the joint request of the learned advocates representing the parties. The appeal was listed on 20.09.2025 however, again at the request of the appellants hearing was adjourned to 10.10.2025. Hearing of the appeal commenced on 02.04.2026. It continued on 08.04.2026 and is heard finally today.

Substantial question of law No.(i):-

(i) Whether both the Courts below erred in interpreting the document of will which goes to the root of the case?

8. Perusal of the Will in question clearly recites that the testator had bequeathed the suit property in favour of Vinayak, husband of defendant No.1 and father of defendant Nos.2 and 3. The fact that the property belonged to the testator and it was bequeathed in favour of Vinayak is not dispute. However, the contention of plaintiff is that, as per the Will, after demise of Vinayak, the suit property was to vest absolutely with the plaintiff.

This contention is contrary to the contents of the Will. The Will recites that in the event the beneficiary Vinayak predeceases, the testator, the property would stand bequeathed to the plaintiff. The contention that property was to vest with the plaintiff after demise of Vinayak is contrary to the contents of the Will.

9. It is pertinent to state that the Will is duly proved during the course of trial.

10. Both the Courts have interpreted the Will and have held that the bequest in favour of Vinayak was absolute and that after his demise, the property was inherited by his legal heirs i.e. the defendant Nos.1 to 3. The contention of the plaintiff is that after demise of Vinayak, the property was to vest with him is rightly discarded by both the learned Courts. The correct interpretation of Will is that, in the event Vinayak, the beneficiary of the Will, predeceases the testator, then the property would vest with the plaintiff. The intention of the testator is not that the bequest in favour of Vinayak was only for his lifetime and after his demise, the property was to go to his elder brother, the plaintiff. The learned Courts have correctly interpreted the Will. This Court sees no reason to take a different view of the matter.

11. The first substantial question of law is therefore answered

against appellant/plaintiff and in favour of the respondents/defendants.

Substantial question of law No.(ii):-

(ii) Whether both the Courts below failed to appreciate the plea of adverse possession in proper perspective in view of the Article 65 of the Limitation Act.

12. As regards alternative plea of adverse possession with respect to suit property in Schedule C, at the outset, it must be stated that a litigant can claim adverse possession only against the true owner. It is therefore essential that in order to set up a case of adverse possession, ownership of the other side must be accepted. Perusal of the plaint will indicate that the plaintiff claims ownership in himself. The plaintiff does not recognize that the defendants had inherited the suit property from Vinayak after his demise and has acquired ownership over the same accordingly. Therefore, the plea of adverse possession cannot be taken by the plaintiff. Nonetheless, perusal of the paragraph-14 of the plaint will demonstrate that the plaintiff has only pleaded long standing possession. There is no pleading, whatsoever, with respect to the possession being hostile. The second substantial question of law is therefore answered in favour of the respondents/defendants and against appellant/plaintiff.

13. The appellants have filed Civil Application No.503 of

2026 stating that some more substantial questions of law arise for consideration in the appeal. During the course of hearing of the appeal, the learned advocate for the appellant has pressed substantial question of law Nos.xvi, xix, xxii and xxiii.

(xvi) Whether the date for adverse possession starts from the date of claiming declaration i.e. MJC-53/1989 filed on dated 14/03/1989 and date of knowledge to the defendant over claiming ownership over the suit property will start from 15/04/1989 when the defendant appeared before Hon'ble Court which amounts to claiming interest adverse to the title of Saroj, Pratik and Pratiksha Patwari as well as Notice.

14. As regards this proposed substantial question of law, the plaintiff claims that adverse possession has commenced from 15.03.1989 i.e. the date of filing of M.J.C. No.53 of 1989, which was subsequently converted into civil suit. The contention of the plaintiff in the plaint is that, on the date of filing of the civil suit, he had perfected his title by way of adverse possession. The contention now sought to be raised that filing of the suit becomes the starting point at which possession become adverse. The case of adverse possession is required to be decided as on the filing of the suit. It appears that this ground is sought to be raised since suit for possession is filed against the plaintiff by the defendant No.4. The plaintiff cannot create grounds with respect to defence in the said civil suit in the present appeal.

(xix) Whether admission not taken into consideration given by the Ori. Defendant No.5 Chandrashekhar in his cross admitted that original plaintiffs are in possession of the suit property as owner.

15. The admission by defendant No.5, who is a tenant, with respect to possession of the plaintiff over the suit property, is not sufficient to establish case of adverse possession. As recorded above, the pleadings with respect to adverse possession, taken on their face do not establish essential ingredients of adverse possession. Title of defendants is also not admitted by the plaintiff. Question of possession being adverse does not arise at all.

(xxii) Whether right to claim property by the defendants was already extinguished and can they claim possession of the suit property.

16. The suit for possession filed by the defendants is not subject matter of the present appeal. The present appeal arises out of a suit filed by the plaintiff claiming ownership by virtue of Will and alternatively, by way of adverse possession. The proposed question of law obviously does not arise for consideration in the present second appeal.

(xxiii) Whether Section 27 of the Limitation Act, 1963 provides for extinguishment of right on the lapse of limitation fixed to institute a suit for possession in the year 2015, the right to such property shall extinguished.

17. Since the case of adverse possession is not proved, the question of defendant Nos.1 to 3 losing title over the suit property

by virtue of Section 27 of the Limitation Act, 1963 does not arise.

18. In view of the aforesaid, Civil Application No.503 of 2026 is rejected.

CIVIL APPLICATION NO.591 of 2025

19. The present application is filed by the appellant/original plaintiff seeking permission to amend the plaint.

20. The plaintiff intends to bring on record the fact relating to filing of Regular Civil Suit No.17 of 2015 by defendant Nos.1, 3 and 4 against the plaintiffs for ejectment and possession. Reference is also made to suit filed by the defendant No.1 and others against the defendant No.4 for cancellation of sale deed dated 31.03.1998 executed by the defendant Nos.1 to 3 in favour of defendant No.4. It is sought to be contended that after lapse of 12 years, from the date of filing of the MJC i.e. from 15.03.1989, plaintiffs have perfected title of the suit property by adverse possession. All these facts which are sought to be incorporated by way of amendment are completely irrelevant for adjudication of the present appeal and suit out of which the appeal arises. The present suit is filed by the plaintiffs seeking declaration of ownership over the suit property on the basis of Will and alternatively by way of adverse possession with respect to the portion of the suit property. The filing of subsequent

suits do not have any bearing on the controversy involved in the suit out of which present appeal arises. The application is therefore **rejected**.

CIVIL APPLICATION NOS.592 of 2026 AND 502 of 2026

21. These applications are filed seeking permission to lead additional evidence under Order XLI Rule 27 of the Code of Civil Procedure. Since the application for amendment of plaint is rejected, the present applications must meet the same fate since permission to lead additional evidence without pleadings cannot be granted. The documents with respect to which evidence is sought to be led are comprising of proceedings in Regular Civil Suit No.17 of 2015 and Regular Civil Suit No.120 of 2018 and other revenue records. These subsequent civil suits and revenue records do not have any bearing on controversy of the matter, since the controversy is restricted to interpretation of Will in question, which is an undisputed document which is duly proved as also the plea of adverse possession set up by the plaintiff, which as held above is not even properly pleaded, much less proved. It needs to be reiterated that perfection of title by way of adverse possession is required to be examined as on the date of filing of the suit. The applications are therefore **rejected**.

22. Having regard to the aforesaid, second appeal is **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate