

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

SECOND APPEAL NO.88/2026

Sunil Rangrao Taywade and another
...Versus...
Anil Rangrao Taywade

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. A.V. Khare, Advocate for appellants
Mr. Y.P. Bhelande & Mr. H.P. Jain, Advocates for respondent

CORAM : ROHIT W. JOSHI, J.
DATE : 09/03/2026

1. The present Second Appeal is filed against the judgment and decree dated 07/01/2026, passed by the learned District Judge – 2, Amravati in Regular Civil Appeal No.159/2023, whereby the judgment and decree dated 03/07/2023, passed by the 4th Joint Civil Judge, Senior Division, Amravati in Regular Civil Suit No.128/2019 has been confirmed.

2. The plaintiff's suit for possession against the defendants came to be partly decreed, thereby granting a decree for possession in favour of the plaintiff with respect to two rooms, situated on first floor of a building, bearing Municipal House No.239, Ward No.4, Plot No.58, Sahajanand Nagar Near Arjun Nagar, Amravati. The suit with respect to Verandah on the ground floor in the same building is dismissed. Aggrieved by the aforesaid decree for possession,

the defendants preferred appeal being Regular Civil Appeal No.159/2023, which came to be dismissed vide judgment and decree dated 07/01/2026. The said concurrent decree is subject matter of challenge in the present Second appeal, which is preferred by the original defendants.

3. The contention of the defendants/appellants is that the plaintiff, who is brother of defendant No.1 had permitted him to construct the said two rooms in the year 1998 i.e. somewhere around the period when the defendant No.1 married to defendant No.2. It is contended that such permission amounts to licence and since the licence is for making permanent construction, it is irrevocable, in view of Section 60 (b) of the Indian Easements Act, 1882. It is contended that the learned Courts have failed to consider the said aspect and have erred in granting a decree for possession in favour of plaintiff.

4. The plaintiff contended that the construction was made by him and the defendant No.1, who is his brother was inducted as a gratuitous licensee over the constructed portion of the two rooms.

5. The learned Courts have accepted the contention of plaintiff. It is not in dispute that the land, on which construction is made, is owned by the plaintiff. Sanctioned building permit is also in the name of plaintiff. The defendants have not led positive evidence to show that defendant No.1 incurred expenses of the construction. Since the land is owned

by plaintiff, it will have to be presumed, unless contrary is proved, that the construction was in fact made by defendant No.1. Findings of facts, recorded by the learned Courts concurrently on this aspect, do not warrant any interference. Second Appeal does not give rise to any substantial question of law and the same is dismissed accordingly.

6. At this stage, Mr. Khare, learned Advocate for the appellants/defendants makes a request that time of around one year should be granted to the appellants to vacate the suit property, since they will have to make alternate arrangement for their residential house.

7. The learned Advocate for the respondent/plaintiff, on instructions, states that at best, time of two months may be granted.

8. Having regard to the fact that the appellant No.1 is brother of respondent and is residing in the suit property since long, in the considered opinion of this Court, it will be reasonable to grant time of six months to the appellants to vacate and deliver the peaceful vacant possession of the suit property to the respondent/plaintiff. The appellants are allowed to retain possession over the suit property till 30/09/2026. This, however, will be subject to condition that both the appellants file a written undertaking with this Court on affidavit on or before 30/03/2026 that they will vacate the suit property and handover peaceful vacant possession thereof to the respondent/plaintiff on or before 30/09/2026 and

further that they will not alter nature of the suit property or part with possession thereof in favour of other person.

9. Upon delivery of possession of the suit property by the appellants to the respondent, the Bank guarantee furnished by them to the learned Executing Court shall be discharged.

10. Parties to bear their own costs.

(ROHIT W. JOSHI, J.)