


MHKO100006502022 	Presented on	:-	20/06/2022
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	Decided on	:-	16/04/2026
	Duration	:-	YY- MM -DD
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**IN THE COURT OF 2nd JT. CIVIL JUDGE JUNIOR DIVISION,
GADHINGLAJ, DIST. KOLHAPUR**

Presided over by D. M. Pawar

**Regular Civil Suit No.169/2022
Exh. No. 239/A**

- 1) Smt.Shobha Chandrakant Kalloli,
Age -55 years, Occu. Household,
- 2) Shri. Rajaram Aannappa Kalloli,
Age -58 years, Occu. Farming and Service
- 3) Smt.Basavva Shivappa Kalloli (Dead),
 - 3 A) Shri. Suresh Shivappa Kalloli,
Age -56 years, Occu. Farming,
 - 3 B) Shri. Basavraj Shivappa Kalloli, **... Plaintiffs.**
Age -51 years, Occu. Farming,
 - 3 C) Shri. Ramesh Shivappa Kalloli (Dead),
 - 3 C) 1. Smt.Mahadevi Ramesh Kalloli,
Age -45 years, Occu. Household and Farming,
 - 3 C) 2. Shivani Ramesh Kalloli,
Age 21 years, Occu. Household,
 - 3 C) 3. Shivchandra Ramesh Kalloli
Age 21 years, Occu. Education
All are R/o. Hiddugi, Tal. Gadhinglaj,
Dist. Kolhapur.

Versus

- 1) Shri. Sunildatta Baburao Kalloli,
Age 45 years, Occu.Business,
- 2) Smt. Sushila Baburao Kalloli, **...Defendants**
Age 60 years, Occu.Household
1 and 2 R/o. Hiddugi, Tal. Gadhinglaj,
Dist. Kolhapur.

Suit for Declaration of Adverse
Possession and Permanent Injunction.

APPEARANCE -

Shri. S. S. Patil : - Advocate for plaintiffs.
Shri. N. A. Vankudre :- Advocate for defendants.

JUDGMENT

Delivered on 16th April , 2026

This is a suit for declaration and permanent injunction.

2. The case of the plaintiffs is as follow:

Description of suit property :

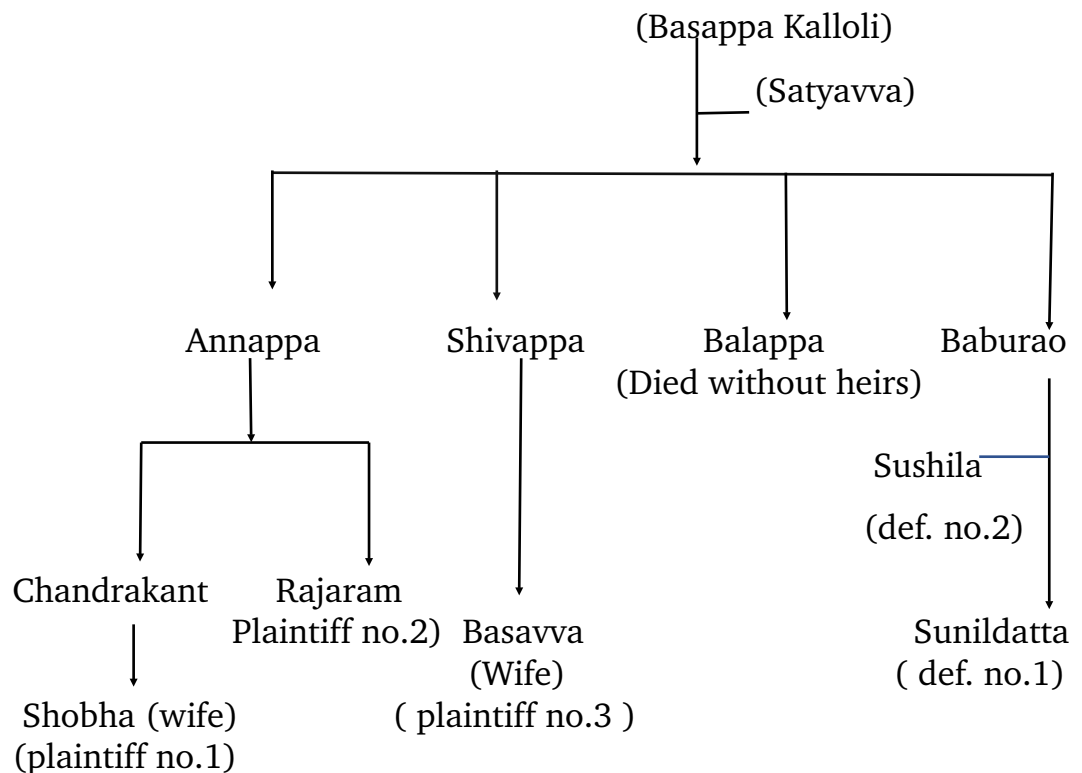
Agriculture land situated at Mauje Hiddugi, Tal-Gadhinglaj, Dist-Kolhapur is as follows -

Survey No.	Gat No.	Area (Hectare R)	Assessment /Tax Rs.Ps.	Area (Hectare R)	Assessment in Rs-Ps
70	507	01.49	11-31	00-47	04-00

3. The suit property has been in the possession and cultivation of the plaintiffs for many years. The plaintiffs have been in cultivation and continues to cultivate crops like sugarcane and soybean in the suit property during both the

summer and rainy seasons. As of today, the plaintiffs have peaceful possession and cultivation of the suit property. The defendants have no right, interest, or any kind of connection with the suit property nor did they ever have possession or cultivation of it.

4. The genealogy of plaintiffs and defendants is as under.



5. The deceased Basappa and his wife Satyavva had four sons- 1.Annappa 2.Shivappa 3.Ballappa and 4.Baburao. A joint family of Annappa, Shivappa, Ballappa, and Baburao existed and still exists today. After the death of Basappa kalloli his four sons Annappa, Shivappa, Ballappa, and Baburao were living together and cultivating Gat No.507. They were using the income/crops from that joint family property for the family's needs.

6. Gat No.507 is not the ancestral property of the plaintiffs and defendant. The original owner of the Gat no.507 was Lingoji Desai. He had given the suit property for cultivation to Balappa Channappa Kalbasi (for the sake of convenience hereinafter refereed as “ Kalbasi ”) r/o at Bhadgaon, Taluka Gadhinglaj. Kalbasi came to reside with plaintiffs and defendants at their common residence at Hidadugi and was cultivating the suit property with the help of these brothers. Kalbasi had no legal heirs. As he came to reside in the family of the plaintiffs and defendants he had developed close relationship with the joint family of plaintiffs and defendants. He was looked after by these brothers and was became as good as family member of these brothers.

7. Baburao was serving as a teacher who was younger brother and has gained confidence of his other brothers. During the lifetime, Kalbasi has instructed all the brothers to get equal shares of his property. After the death of Kalbasi, Baburao had promised to all the brothers to divide the said property amongst them. But he had taken undue advantage of the confidence reposed by his brothers and did not disclose the fact that Kalbasi had executed any document in his favour. When his other brothers started requesting the partition of the property left by the deceased Kalbasi, he started avoiding the same. The plaintiff Nos. 1 and 2 have their respective houses in the suit property, which is numbered as Grampanchyat Milkat No.362 and 513/2. The plaintiff No.3 has 20R land adjacent to the landed property of plaintiff Nos. 1 and 2. Thus, all the plaintiffs are cultivating

the said suit property and taking crops. Thus, the plaintiffs have claimed declaration of adverse possession on the suit property and perpetual injunction against the defendants.

8. Annappa executed an Hamipatra in the presence of panchas on a ten rupees stamp paper dated 11/02/1988 in favour of his brother Baburao . In that document, he has stated that “ I will dig a borewell in Gat No.507. The panchas have allotted me the 27 R Northern side land of Gat No.507 as my share. I will dig the borewell from my own expense.” Annappa stated this and digged a borewell in his 27 R share. He found three inches of water. Using this water, he cultivated sugarcane in that 27 R area. This 27 R area on the northern side of suit property Gat No. 507 has been in the possession and cultivation of plaintiffs No.1 and 2 for many years since the lifetime of Annappa.

9. The houses of plaintiffs No.1 and 2 are located within this 27 R area, and these houses are registered with the Grampanchyat. plaintiffs No.1 and 2 have peaceful possession and enjoyment of this 27 R area.

10. Adjacent to the land of plaintiffs No.1 and 2, 20 R portion of (suit property) Gat No.507 was allotted to the husband of plaintiff No.3, Shivappa, in the presence of the panchas. Plaintiff No.3's husband, Shivappa, was helping them during his lifetime, and he was also in joint possession and use of the suit property. This 20 R land has been cultivated and possessed by plaintiff No.3, Basavva along with her husband since his lifetime for more than 30 years . The suit property is in

her possession. Plaintiffs No.1 and 2 are enjoying the 27 R northern area of Gat No.507, and plaintiff No.3 is enjoying the adjacent 20 R land.

11. The defendants never had ownership and possession of the suit property. Defendants do not have ownership interest of any kind regarding Gat No.507. The defendants were not the owners of the suit property.

12. Since many years, plaintiffs no.1 and 2 have actual possession. Therefore, they have peaceful possession and enjoyment of the area of 27 R of suit property for more than 30 years, till today. Thus, they have acquired ownership of the 27 R through adverse possession.

13. Annappa was cultivating the suit property and sending sugarcane crop to the Gadhinglaj sugar factory. Defendant no.1 by colluding with government officials and using false documents managed to get their name entered into the 7/12 extract. Kalbasi never executed any document regarding ownership rights in favour of Baburao. The deceased Annappa and Shivappa paid 5,000/- Rupees each to Kalbasi as consideration for the suit property.

14. In the first week of June 2022, the defendants obstructed plaintiffs while cultivating suit property on the ground of ownership claimed by them. So the plaintiffs were forced to file this suit, and it is within the limitation.

15. The defendants appeared in the suit and filed their written statement at Exh 18 and resisted a claim of plaintiffs.

They contended that the description of the suit property is wrong. The four boundaries of the suit property are not mentioned in rough sketch.

16. The land in Gat No.507 was never the joint property of the defendant's and the plaintiff's predecessor. Kalbasi never stated that the suit property should be shared equally by all four brothers. Annappa not gave Hamipatra dated 11/02/1988 to Baburao and Baburao not signed it. Suit property not given to the plaintiffs in the partition, because the suit property was owned and possessed by Kalbasi.

17. Plaintiff Nos. 1 and 2 never had possession of the area of 27 R, nor their house located there. Similarly, plaintiff No. 3 did not have possession of the area of 20 R. Plaintiffs not have possession of suit property for the last 12 years. Therefore, it cannot be said legally that they have become owners by adverse possession. The entire suit property belongs to the defendants and they are owners and possessor of it.

18. In this regard, the plaintiffs have illegally made entries in the Grampanchayat records. When the defendants came to know about this, they filed a complaint with the Grampanchayat. The plaintiffs do not acquire any ownership rights based on the Grampanchayat records. No dispute was ever raised by the plaintiffs during the lifetime of Baburao. Furthermore, Annappa and Shivappa never claimed right in the suit property. Defendant No. 1 resides at Kolhapur, and due to the advanced age of defendant No. 2, she is unable to travel or move around plaintiffs are taking undue advantage of their

absence and claiming rights over the suit property through illegal statements and without any legal authority. Therefore, they do not acquire any such rights.

19. The valuation of the suit made by the plaintiffs is incorrect, and the court fee paid is also insufficient. Therefore, the suit is liable to be dismissed.

20. The ancestral properties belonging to the plaintiffs and defendants have been already partitioned in the year 1960 and each one is cultivating and residing separately in their respective agricultural and house properties. Therefore, there is no Joint Hindu Family property of plaintiffs and defendants.

21. The defendant have come up with a specific case that Kalbasi was tenant of the property which was owned by Virgonda Desai and as a tenant he had purchased the property and accordingly the Tahsildar issued sale certificate in his name as per provisos of 32(M) of The Maharashtra Tenancy and Agricultural Lands Act, 1947. Baburao was residing with Kalbasi and was looking after him till his death. Therefore during his lifetime Kalbasi executed registered Will in favour of Baburao on 27/05/1974. Kalbasi thereafter died on 02/08/1990. Accordingly, probate proceeding was initiated on the basis of said will by Misc. Civil Appln. No.69/1991 which was allowed on 17/10/1992 and mutation entry bearing No.635 was taken in 7/12 extract of Gat No.507 on 25/02/1993.

22. Thus, after the death of Kalbasi, his tenanted property was mutated in the name of Baburao who became the

legal and absolute owner of it. Therefore, the plaintiffs have no authority over the suit property and they are no way connected with the suit property.

23. Baburao passed away on 13/11/2016 and subsequently, the defendants became the owners of the suit property by inheritance. Since then, the defendants have ownership and possession over the suit property.

24. By taking undue advantage of old age of Baburao plaintiffs in collusion with the Grampanchayat staff illegally entered their name in the Grampanchayat record for a house. In reality, no such house exists in the suit property. Defendant No. 1 resides at Kolhapur for business purposes. This fact is known to the plaintiffs. In such circumstances, the defendant informed about the removal of these entries to Grampanchyat. Taking advantage of this, the plaintiffs has made it appear as if there is a house in the suit property. However, the plaintiffs does not have a house of any kind in the suit property.

25. House, well and borewell are situated in the suit property since the time suit property was cultivated by Kalbasi. After the death of Kalbasi, Baburao and after his death defendants became the legal heirs, and revenue records to that effect also exist. Under such circumstances, the plaintiffs has no legal right to file this suit.

26. Adjacent land holders of suit property were causing disturbance to the boundaries, so the defendants in this case submitted an application dated 10/02/2022 to the Deputy

Superintendent of Land Records Office, Gadhinglaj. Accordingly, measurement was conducted and the boundaries of the suit property were fixed. The defendants have installed a wire compound along the boundaries of the land as fixed. Presently, the defendants have cultivated a soybean crop across the entire area.

27. The suit is not within the limitation period and it is not in accordance with the provisions of the law. The plaintiffs has filed this suit based on false and imaginary statements; therefore, it should be dismissed with costs. Since the plaintiffs filed this suit and unnecessarily caused the defendant to face financial expense and economic loss, defendants prayed for compensatory costs.

28. After considering rival pleadings, I framed issues at Exh.27 to which I have recorded findings for the reasons stated below.:-

Sr.No.	ISSUES	FINDINGS
1	Does the plaintiffs prove that the suit property is in their possession ?	No.
2	Do plaintiff Nos. 1 and 2 prove that they have been in possession of the Northern side 27 R area of the suit property for more than 12 years?	No.
3	Does plaintiff No. 3 prove that she has been in possession of the 20 R area of the suit property for more than 30 years ?	No.
4	Does the plaintiffs prove that the defendants obstructed plaintiff's peaceful possession over suit property ?	No.

5	Whether the suit is barred by the principle of Order 7 Rule 3 of the Code of Civil Procedure ?	No.
6	Whether the plaintiffs entitled to a declaration as prayed by them ?	No.
7	Whether the plaintiffs entitled to a permanent injunction as prayed by them ?	No.
8	Does the plaintiffs prove that they are the owners of the suit property by way of adverse possession ?	No.
9	Does the plaintiffs prove that they have valued the suit properly and paid the necessary court fees ?	Yes.
10	Whether the defendants are entitled to receive compensatory costs ?	No.
11	What order and decree ?	Suit is dismissed with costs.

REASONS

29. To prove the suit claim, plaintiff No.1 examined herself as P.W.No.1 at Exh.40, Suresh Shivappa Kalloli as P.W.No.2 at Exh.65, Vishnu Appa Nilve as P.W.No.3 at Exh.69, Yogesh Eknath Bamne as P.W.No.4 at Exh.74, Jitendra Narayan Redekar as P.W.No.5 at Exh.82, Smita Ajit Suryawanshi as P.W.No.6 at Exh.87, Ashok Jivba Gurav as P.W.No.7 at Exh.94, Swapnil Rajaram Kalloli as P.W.No.8 at Exh.98 and Satish Subhana Redekar as P.W.No.9 at Exh.232. The plaintiffs relied upon following documentary evidence -

No.	Description	Exhibit No.
1	Grampanchayat Extract of Property No 513/1	50
2	The 7 /12 extract of Gat no. 507.	51,54,55

3	Consolidation extract of suit property.	52
4	Grampanchayat Extract of Property No 513/2	53 ,57,68
5	Grampanchayat Receipt	56,58,75,76
6	Notice given to Chandrakant Kalloli by Grampanchyat Hiddugi.	88
7	Sugarcane weight slip	95,96

Plaintiffs closed oral evidence by filing pursis at Exh.237.

30. To disprove the suit claim, defendant No.1 examined himself as D.W.No.1 at Exh.101. The defendants relied upon following documentary evidence -

No.	Description	Exhibit No.
1	7 /12 extract of survey no.110	104, 105
2	Mutation entry no. 1275	106
3	Mutation entry no.373	107
4	Consolidation extract of Gat no.545.	108
5	Consolidation extract of Gat no.546	109
6	Consolidation extract of Gat no. 547	110
7	7/12 extract of Gat no.545	111
8	7/12 extract of Gat no.546	112
9	7/12 extract of Gat no.547	113
10	Mutation entry no.915-A	114
11	Mutation entry no.913	115
12	Grampanchayat Extract of Property No 206	116
13	Grampanchayat Extract of Property No 252/2	117
14	Grampanchayat Extract of Property No 271/2	118
15	Grampanchayat Extract of Property No 263/2	119
16	Grampanchayat Extract of Property No. 314, 315.	120

17	Grampanchayat Extract of Property No 324.	121
18	Grampanchayat Extract of Property No 344	122
19	Grampanchayat Extract of Property No 371	123
20	Grampanchayat Extract of Property No 371/1	124
21	Grampanchayat Extract of Property No 364/1	125
22	Grampanchayat Extract of Property No 361	126, 127, 128
23	Grampanchayat Extract of Property No 371/2	129
24	Grampanchayat Extract of Property No 364/2	130
25	Grampanchayat Extract of Property No 362	131, 132, 133
26	Grampanchayat Extract of Property No 252/1	134
27	Grampanchayat Extract of Property No 271/1	135
28	Grampanchayat Extract of Property No 263/1	136
29	Grampanchayat Extract of Property No 316/1,316/2.	137
30	Grampanchayat Extract of Property No 313	138
31	Grampanchayat Extract of Property No 323	139
32	Grampanchayat Extract of Property No. 325,2	140
33	Grampanchayat Extract of Property No 343	141
34	Grampanchayat Extract of Property No 345	142
35	Grampanchayat Extract of Property No 370	143, 144
36	Grampanchayat Extract of Property No 363s	145, 146
37	Grampanchayat Extract of Property No 360	147, 148, 149
38	Grampanchayat Extract of Property No 252/3	150
39	Grampanchayat Extract of Property No 271/3	151
40	Grampanchayat Extract of Property No 263/3	152
41	Grampanchayat Extract of Property No 200	153
42	Grampanchayat Extract of Property No 248	154
43	Grampanchayat Extract of Property No 266	155

44	Grampanchayat Extract of Property No 260	156
45	Grampanchayat Extract of Property No 302	157
46	Grampanchayat Extract of Property No 316	158
47	Grampanchayat Extract of Property No 335	159
48	Grampanchayat Extract of Property No 362	160, 161
49	Grampanchayat Extract of Property No 355	162
50	Property No 351 Grampanchayat Extract	163,164
51	Consolidation extract of Gat no. 584	165
52	7/12 extract of Gat no. 544	166, 167
53	Mutation entry no.704	168
54	7/12 extract of survey no.41	169, 170
55	7/12 extract of survey no.70	171,172
56	7/12 extract of Gat no.507	173 To 175, 200
57	Mutation entry no.50	176
58	Certified copy of Exh.1 and order below it of Civil M.A. No.69/1991	177
59	Certified copy of Letter of Administartion in Civil. M.A.69/1991	178
60	Certified copy of letter given to the Collector, Kolhapur in regard to Civil M.A. No.69/1991	179
61	Mutation entry no.635	180
62	Grampanchayat Extract of Property No 315	181
63	Grampanchayat Extract of Property No 344	182
64	Grampanchayat Extract of Property No 341	183
65	Grampanchayat Extract of Property No 460	184
66	Grampanchayat Extract of Property No 493	185
67	Grampanchayat Extract of Property No 487	186
68	Grampanchayat Extract of Property No 482	187
69	Grampanchayat Extract of Property No 351	188
70	Grampanchayat Extract of Property No 482.	189,190, 191

71	Land revenue Receipts	192 to 198
72	8 A extract of Baburao	199
73	Map of Gat No.507	201
74	Certified copy of Land record map of Gat no.506	202

Defendants closed oral evidence by filing pursis at Exh.238.

AS TO ISSUE NOS. 2, 3, 6 AND 8 :-

31. All these issues are regarding the possession of the plaintiffs over suit property. So to avoid repetition of facts and evidence I discussed it together. Gat no.507 At village Hiddugi, Tal-Gadhinglaj having area 1 Hectare 49 R out of it 47 R is the suit property. Relationship of plaintiffs and defendants is admitted. It is admitted fact that suit property is not ancestral property of plaintiffs and defendants family. Gat no.507 was owned by Lingoji Desai and Kalbasi was the tenant of this property.

32. It is the contention of the plaintiffs that suit property is in their possession since last many years and they used to cultivate it peacefully. Defendants have no concern with suit property and they not have possession of it. Annappa and Shivappa used to cultivate Gat no.507 along with Kalbasi. Predecessor of defendants - Baburao was teacher and he used to get cultivated Gat no.507 and other properties with the help of Annappa, Shivappa and Balappa.

33. Kalbasi always told to four sons of Basappa that they will each take 1 acre land of Gat No.507. Kalbasi never executed

deed in favour of Baburao regarding Gat No.507. After death of Kalbasi, Baburao avoided partition of the land Gat no.507.

34. On 11/02/1988 Annappa executed Hamipatra in favour of Baburao on 10 Rs. stamp paper and stated that he will took bore-well in Gat no.507 and panch witnesses given him 27 R land towards North side of Gat no.507 in partition. Accordingly he took bore-well in the said area and he used to get crop of sugarcane. This area is in the possession of plaintiff nos. 1 and 2 since last many years since the lifetime of Annappa. Plaintiffs nos. 1 and 2 have their houses in the said area and it has entry in Grampanchayat record. They have peaceful possession of it. Adjacent area of 20 R of said area is given to the share of husband (Shivappa) of plaintiff no.3 by panch witnesses in partition. Plaintiff no.3 is in the possession of said area since more than thirty years since the lifetime of her husband Shivappa. Accordingly, plaintiff nos.1 to 3 have peaceful possession over suit property. Defendants never have possession and ownership of it.

35. In suit property plaintiffs no. 1 and 2 have their houses since ago. Plaintiff no.1 have house bearing Grampanchayat Milkat no.362 and plaintiff no.2 have house bearing Grampanchayat Milkat no.513/2. Plaintiff nos.1 and 2 are using these houses since last many years till today. Accordingly plaintiffs no. 1 to 3 have their possession over suit property for more than 12 years and they became the owners by adverse possession. So plaintiffs filed suit for declaration of their title by adverse possession.

36. Defendants came with the case that they are owner and possessors of Gat no.507 since the lifetime of their predecessor Baburao. They denied the joint cultivation of suit property by Annappa, Shivappa and Baburao. Kalbasi was residing with Baburao and during his lifetime he executed registered Will dated 27/05/1974 in favour of Baburao regarding Gat no.507. They denied execution of Hamipatra dated 11/02/1988 and Baburao's signature over it. Plaintiffs no.1 and 2 never had possession of 27 R and plaintiffs no. 3 of 20 R. Plaintiffs never had possession over suit property, so they are not owners by adverse possession.

37. Plaintiffs illegally done entries of houses in Grampanchayat record, when defendant get knowledge of it he filed complaint to Grampanchayat. By said entry plaintiffs not get ownership. Actually there is no as such house in the suit property. Defendant or his predecessor not consented to the said entry. During the lifetime of Baburao plaintiffs not claimed right in suit property. After death of Baburao defendants are residing at Kolhapur and by getting undue- advantage without any lawful right plaintiffs claiming possession over suit property.

38. Kalbasi died on 02/08/1990. So Baburao filed Civil M.A.No. 69/1991 for getting probate along with Letters of Administration. Accordingly Civil Judge Senior Division, Kolhapur by order dated 17/10/1992 granted probate along with Letters of Administration. On the basis of which mutation entry no. 635 dated 25/02/1993 entered. Since partition of ancestral properties in the year 1960, predecessors of plaintiffs

and defendants are residing separate. After death of Kalbasi suit property is in the possession of defendants as owner. Baburao died on 13/11/2016.

39. From the time when suit property was cultivated by Kalbasi it bears house, well and bore-well. On 10/02/2022 defendant fixed the boundaries of Gat no.507 by measurement and he done wire fencing to it. Learned advocate for defendants argued that there is no provision in the law for adverse possession. Article 65 of Limitation Act, 1963 gives period of limitation of 12 years to file suit for recovery of possession from the date when possession of defendant becomes adverse to the plaintiff. For the plea of adverse possession plaintiffs must admit defendants title. At the time they deny the title of the defendants they came out of the plea of adverse possession. For the suit of adverse possession they must admit the title of defendants. As they denying the title of defendant the suit for adverse possession is not tenable. Plaintiffs not pleaded about their hostile and peaceful possession. Plaintiffs not filed evidence that they given Rs.5000/- each to Kalbasi. For this argument he relied on following citations.

A) Tanaji Gulabgir Gosavi v/s State of Maharashtra AIR Online 2019 Bom 1056, it is held by Hon'ble Bombay High Court that pleading are the foundation of litigation. In pleadings, only the necessary and relevant material must be included and unnecessary and irrelevant material must be excluded.

The plaint nowhere states that point of time when the possession of the plaintiffs or that of his father became adverse

to the defendants. So also, the plaint does not contain an averment that such possession was hostile to the defendants or for that matter at any point of time whatsoever, any assertion of hostile title was ever made by the plaintiffs against the defendants. Since these basic pleas are absent in the plaint, there is no evidence led this regard.

It is a settled position of law that peaceful, open and continuous possession for whatever time, does not constitute an "Animus Possidendi" in other words, mere physical fact of exclusive possession, is not enough. The "Animus possidendi" to hold as owner in exclusion to the actual owner, to his knowledge, is the most important factor to establish a plea of adverse possession. Therefore, a person, who claims adverse possession, should state/show :

- (a) Admit that he is not owner of the land in respect of which he claims a declaration of ownership by way of possession.*
- (b) Admit the title of the owner to the property to which he claims a declaration of ownership by way of adverse possession ;*
- (c) On what date he came into possession ;*
- (d) What was the nature of his possession ;*
- (e) Whether such possession was on account of wrongful dispossession of the original owner;*
- (f) whether such dispossession was actual, visible, exclusive;*
- (g) whether the factum of dispossession was known to the rightful owner;*

(h) whether there was any hostile assertion of title to the knowledge of the rightful owner;

(i) the date of such hostile assertion and the continuity of the same throughout the statutory period, to the knowledge of the rightful owner;

(j) the document which may demonstrate such hostile assertion,if there is any.

It is further a trite position of law, that a person pleading adverse possession has no equities in his favour and since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to demonstrate his adverse possession. The question of hostility to the knowledge of the owner and its openness is further germane to the plea of adverse possession. The possession must start with wrongful dispossession of the rightful owner and be actual, ,visible,exclusive,hostile and continued over the statutory period. The necessity of a plea of adverse possession,is the point at which the possession is claimed to have become adverse to the true owner so as to establish the starting point of limitation. If this is absent,then no amount of time spent over another's property, would permit, raising successfully, of a plea of adverse possession. Mere possession for a period of more than 12 years does not ripen into a title in absence of " Animus Possidendi" .

B) *M.Radheshyamal v/s V. Sandhya and Another 2024 DGLS (SC)275 it is held by Hon'ble Apex Court that if there was no foundation for the plea of adverse possession in the*

plaint itself then the suit for declaration of ownership by the plaintiffs must fail. Therefore, to prove the plea of adverse possession:-

(a) The plaintiffs must plead and prove that he was claiming possession adverse to the true owner,

(b) The plaintiffs must plead and establish that the factum of his long and continuous possession was known to the true owner;

(c) The plaintiffs must also plead and establish when he came into possession.

(d) The plaintiffs must establish that his possession was open and undisturbed.

When a party claims adverse possession, he must know who the actual owner of the property is. The defendants are claiming through the person who was admittedly the original owner. It is obvious that the defendants have a better title to the suit property than the plaintiffs, a trespasser.

40. It is admitted fact that suit property is not ancestral property. Suit property was owned by Kalbasi. It is not pleading that Kalbasi partitioned said property between Annappa, Shivappa, Balappa and Baburao and there is no evidence as to such extent. As this is not ancestral property plaintiffs can not claim partition in it. There is ample oral and documentary evidence on record which shows that partition of ancestral property was took place in the year 1960 between four sons of Bassappa. From that time they are residing separate and cultivating ancestral properties separately.

41. Plaintiffs not pleaded that when Kalbasi came in their joint family to reside with them. In fact plaintiffs wrongly pleaded about the status of their joint family is in existence till today. Plaintiffs not filed evidence to show that Kalbasi was residing in their joint family and all the four brothers along with their mother Satyavva served him and contributed his expenses. When defendants came with the case that Kalbasi was residing with Baburao and he executed Will in favour of Baburao on 27/05/1974 and he died on 02/08/1990. When plaintiffs came with the case then the burden lies on them to prove the pleadings.

42. Plaintiffs denied ownership and possession of defendants over suit property. As argued by learned advocate for defendants and as stated above in citation of *Tanaji Gosavi and M.Radheshyamlal* plaintiffs not admitting ownership of defendants over suit property, when defendants claim ownership on the basis of probate (Exh.178) of Will of Kalbasi who was the real owner of Gat no.507. So, defendants have better title than plaintiffs. Plaintiffs not filed evidence to show the mode of their possession.

43. P.W.No.1 Shobha and P.W.No.2 Suresh admitted the existence of house of defendants in Gat no.507. 7/12 extract of Gat no.507 bears entry of only one house. Plaintiffs not mutated entry of their houses in 7/12 extract of Gat no.507. So it shows that the entry of house in 7/12 extract of Gat no.507 is of defendants' house.

44. Plaintiffs not cross-examined D.W.No.1 Sunildatta on the point of measurement of Gat no.507 and wire fencing of it. So it shows that plaintiffs admitted it. The burden of proof is on the plaintiffs to prove adverse possession.

45. Learned advocate for the plaintiffs argued that suit property is not ancestral property. Kalbasi not executed Will dated 27/05/1974 in favour of Baburao. Notice of probate not issued to the plaintiffs. Defendant not led evidence regarding wire fencing of Gat no.507. Notice of measurement of Gat no.507 not issued to the plaintiffs. Temporary injunction application was allowed in favour of plaintiffs and appeal filed by defendants was also rejected.

46. He further argued that since the lifetime of Kalbasi plaintiffs have possession over suit property. Defendants not filed counter-claim and not claimed permanent injunction against plaintiffs. Mutation entry no.635 is only for the collection of revenue and it not confers title on the defendants. Notice of mutation entry no.635 was also not served on plaintiffs.

47. He further argued that P.W.No.4 Yogesh Bamne Gramsevak of village Hiddugi Grampanchayat deposed about the houses bearing Grampanchayat Milkat no.513/1 and 513/2 of plaintiffs no.1 and 2 in suit property. Gat no.507 is having the area of 1 Hectare 49 R and plaintiffs have no concern with total area except suit property. From the evidence of P.W.No.3 Nilave and P.W.No 9 Redekar Hamipatra dated 11/02/1988 is proved. Plaintiffs proved that they are in possession of suit property

since the lifetime of Kalbasi. So plaintiffs are entitled for declaration of title by adverse possession and permanent injunction as defendants are obstructing their peaceful possession over suit property. In support of this argument he relied on following citations-

A. Maruti Dagadu Charwad v/s Shri.Bhau Nama Gujar (2017)5 MhLJ 627 It is held by Hon'ble Bombay High Court that in the case of adverse possession requirement of openness and publicity , does not always require specific notice or proof of the true owner's specific knowledge of adverse possession. What is important is that the possession is open , unconcealed and sufficiently public to impute knowledge to the true owner. It need not be so effective as to bring it to the specific knowledge of the owner, especially where it is not an ouster of title.

In case of adverse possession continuous entries in revenue records showing the defendant's cultivating possession over the statutory period, without objection from the true owner or their predecessor, strongly support a claim of open and notorious adverse possession.

In the case in hand plaintiffs not filed revenue entries to show their possession. So with due respect I mention here that this citation is not applicable to the case in hand.

B. Parsinni (Dead) by Lrs.And Others v/s Sukhi and Others (1993) 4 SCC 375 It is held by Hon'ble Supreme Court that adverse possession starts when defendant's possession to the plaintiffs. In this case, daughters of deceased owner were given

property for enjoyment until marriage/death. After marriage, their continued possession for over 30 years with open assertion of ownership supported by revenue records to the exclusion of other heirs becomes adverse possession. Burden of proof for adverse possession lies on the claimant, requiring peaceful, open and continuous possession adequate in continuity, publicity, and extent to show adversity to the true owner. Mere initial acquiescence or consent does not prevent possession from becoming adverse after the specified period/event (marriage in this case). Appellants proved open and continuous possession as owners for over 30 years, perfecting their title by prescription and barring the suit by limitation under Article 65.

C. Ravinder Kaur Grewal And Others v/s Manjit Kaur and Others. (2019) AIR (SC) 3827 (2019) It is held by Hon'ble Supreme Court that a person who has perfected their title to immovable property through adverse possession for the statutory period of twelve years can file a suit under Article 65 of Limitation Act, 1963 for declaration of title and protection of their possession, or for recovery of possession if illegally dispossessed, including by the original owner whose title has been extinguished.

Upon the expiry of the statutory period of limitation for the original owner to recover possession, their title is extinguished, and the person in adverse possession acquires a new, absolute title to the property. This acquired title can be used by the adverse possessor as a “ sword ” (to initiate legal action) as well as a “ shield ” (as a defence in legal action .)

In the matter of adverse possession, the courts have to find out the plea taken by the plaintiffs in the plaint. In the plaint, the plaintiffs who claims to be owner by adverse possession has to plead actual possession. He has to plead the period and the date from which he claims to be in possession. The plaintiffs has to plead and prove that his possession was continuous, exclusive and undisturbed to the knowledge of the real owner of the land. He has to show a hostile title. He has to communicate his hostility to the real owner.

D. Dagadabai (Dead) by Lrs. v/s Abbas @Gulab Rustum Pinjari (2017) 3 BCR 790 it is held by Hon'ble Supreme Court that person who claims title over property an strength of adverse possession and thereby wants Court to divest the true owner of his ownership rights over such property, i required to prove his case only against true owner of property. Such person must necessarily first admit ownership of true owner over property to knowledge of true owner and secondly, true owner has to be made a party to suit to enable Court to decide plea of adverse possession between two rival claimants. So in view of ratio of this citation plaintiffs not admit ownership of defendants over suit property.

E. Vishnu Ramchandra Undage and others v/s Ganpati Ramchandra Undage Mh.L.J 2005 (4) Mh.L.J 1108 it is held by Hon'ble Bombay High Court that a conjoint reading of sections 213 and 57 of the Indian Succession Act indicate that ordinarily no right as executor or legatee can be established unless a Court of competent jurisdiction grants probate of the will.

Those wills which fall outside clauses (a) and (b) of section 57 will not require probate. Since in this case the will dated 16-08-1996 is made at Kolhapur, in respect of property situate at kolhapur, there is no need to obtain probate because Kolhapur does not fall within the ordinary original civil jurisdiction of Bombay High Court.

In the case in hand learned advocate for the plaintiffs not pleaded about Will and probate. So without pleading, issue in that regard was not framed and evidence not led by both the parties. So argument without pleading can not be taken into consideration. So with due respect I mention here that this citation is not applicable to the case in hand.

F. Mallavva and anr. v/s Kalsammanavara Kamma (since dead) by Legal Heirs & ors. Civil Appeal No.14803/2024 It is held by Hon'ble Supreme Court , that it appears that two reliefs were prayed for. One for cancellation of the sale deed and the second for recovery of possession. The court treated the relief for possession as consequential prayer and the relief for cancellation of Sale Deed as the substantive prayer.

The limitation period should be considered with respect to the substantive relief of cancellation of Sale Deed which would be three years from the date of knowledge of Sale Deed sought to be cancelled.

By seeking to get the sale deed set aside on the grounds as may have been urged in the plaint, the plaintiff could be said to be trying to regain his title over the suit property and recover

the possession. In such circumstances, the period of limitation would be three years and not twelve years.

In the case in hand limitation period of suit is not an issue. So with due respect I mention here that this citation is not applicable here.

48. In view of pleadings I perused evidence on record. plaintiffs came with the theory of joint family of their and defendants predecessors till today. P.W.No.1 Shobha admitted in cross-examination about the partition of house and agricultural property in the year 1960 and their separate residence and cultivation of ancestral properties. Documentary evidence of partition that is 7/12 extract of ancestral properties of each son of Basappa is having separate share filed on record. The mutation entries filed on record also shows that after partition they sold their separate shares to other persons. So it clearly shows that in the year 1960 partition took place between Annappa, Shivapa, Balappa and Baburao.

49. P.W.No.1 Shobha and defendant no.1 admitted that Kalbasi was not the member of Kalloli family and he was not their relative. In the year 1988 suit property was owned by Kalbasi. P.W.No.1 Shobha deposed in her cross-examination that she not challenged Will of Kalbasi executed in favour of Baburao. She not filed partition deed or any other document to show that area of 27 R given to Annappa and area of 20 R given to Shivappa in partition. She not given application for the revenue entry of said partition. She not filed document on record to show that Kalbasi given them suit property by written

note and before that they are in possession of suit property .

50. She clearly admitted in cross-examination that she not pleaded the starting date of their possession of suit property in plaint and her affidavit of chief- examination. She deposed that since 1988 suit property is in her possession. She further admitted that she not pleaded in plaint and affidavit of chief-examination that defendants have knowledge of her possession over suit property.

51. She further admitted in cross-examination that by government fund she constructed new house no.362 by the demolition of ancestral old house. She further admitted that defendants have house in Gat no.507. Defendant no.1 disconnected the electricity supply of Gat no.507 in the year 2016 by giving application. To restart that electricity supply they not filed application to M.S.E.B. She not filed complaint or suit against defendants regarding electricity supply. She denied the possession of defendants in Gat No.507.

52. P.W.No.2 Suresh is son of plaintiff no.3. He deposed as per the contents of the plaint. He admitted in cross-examination that he not get information that after the death of Kalbasi to whom Gat no.507 was transferred. During the lifetime of Kalbasi his father Shivappa was Sarpanch of village Hiddugi for 10 years. At that time they not filed complaint against Baburao alleging that he tortured his father Shivappa and uncle Annappa. He has no knowledge that defendants are owners of Gat no.507. He admitted ownership and possession of Baburao and after his death of defendants in Gat no.507. He not filed

document on record that 20 R land of Gat no.507 given to his share by partition. He not filed application to enter his name in 7/12 extract , other right column or Pik Pahani column.

53. P.W.No.8 Swapnil Kalloli is son of plaintiff no.2. He deposed in his affidavit of chief-examination as per the ratio of plaint. In his cross-examination he deposed that he not filed document to show that 20 R land given to Shivappa by partition.

54. From the above evidence of P.W. no.1 Shobha, P.W.No.2 Suresh and P.W.No.8 Swapnil Kalloli it is clear that they not pleaded the starting date of possession of suit property. They admitted the existence house of defendants in suit property. P.W.No.2 Suresh admitted the possession and ownership of defendant in Gat no.507.

55. Revenue entries are meant for fiscal purpose, but they have presumptive value to show possession. From perusal of 7/12 extract of Gat no.507 (Exh-51) it is seen that name of Baburao is entered since the year 1996-1997. It also shows his possession. It also shows the entry of house, well and bore-well. From perusal of 7/12 extract of Gat no.507 (Exh-54) it is seen that name of Virgonda Desai was deleted and name of Kalbasi was entered from the year 1974-1975 as owner.

56. To prove the possession of plaintiffs over suit property plaintiffs filed house property assessment extract of house no.513/1 and 513/2, which shows these houses are entered in the name of plaintiffs no.1 and 2 as owner. But, plaintiffs pleaded in plaint paragraph no.14 the house no.362 as

house of plaintiff no.1 in suit property, while plaintiffs led evidence regarding house no.513/1. P.W.No.1 Shobha admitted in cross-examination that house no.362 is the house which she built from government fund after demolition of ancestral house. Plaintiffs not took efforts to amend the house number in the plaint.

57. It is the contention of the plaintiffs that plaintiffs no. 1 and 2 have their houses in suit property. To prove this fact they relied on house property assessment extract of house no.513/1 and 513/2 (Exh-50 and Exh-53). It shows the year of construction as 30 to 40 years old. So from this entry they tried to show their possession in suit property since last 30 to 40 years. But the other assessment extracts of these houses filed by defendants not shown the year of construction and first time it shown in the year 2019. It is important to mention here that plaintiffs simply pleaded that they are in possession of suit property since many years, but they not pleaded the exact date and also year of starting of possession in suit property. They only pleaded that they are in possession of suit property more than twelve years. They also not pleaded mode of their possession. In the above citation of *Ravindra Kaur Grewal* Hon'ble Apex Court referred the para 11 in the citation of *Karnataka Wakf Board such as the possession must be adequate in continuity, in publicity, and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.*

Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show : (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

58. Therefore, as per ratio of above citation the date is most important to count the limitation period of twelve years. Plaintiffs not pleaded the date when they came into possession and also that the fact of their possession is known to the defendants and their possession is open and undisturbed. So the plaintiffs not pleaded basic ingredients for title by way of adverse possession.

59. Plaintiffs denied the ownership and possession of defendants over suit property. After filing of written statement plaintiffs get the knowledge that Kalbasi executed Will dated 27/05/1974 in favour of Baburao and he get probate dated 17/10/1992. On the basis of which mutation entry no.635 dated 25/02/1993 entered. Then also plaintiffs not challenged

authenticity of Will and mutation entry by amendment of plaint. Only denial of these facts during argument does not wash the title of the defendants over suit property. Name of Baburao was entered vide mutation entry no.635 (Exh.180) dated 25/02/1993 and his name was entered to 7/12 extract of Gat no.507 . It is admitted by P.W.No.1 Shobha and P.W.No.2 Suresh that they not filed application to enter their name as possessors in 7/12 extract of suit property. It shows that plaintiffs not took any efforts to prove their possession or to challenge the possession and ownership of defendants. Further as stated in above citation of *Tanaji Gosavi* for plea of adverse possession person must admit that he is not the owner of the land in respect of which he claims a declaration of ownership by way of adverse possession. He must admit title of the owner to the property to which he claims a declaration of ownership by way of adverse possession. But plaintiffs denied the ownership of the defendants not only of suit property but also of entire Gat no.507 and claims themselves as owner and possessor without the support of any title document when defendants have better title than them.

60. From the evidence of P.W.No.4 Yogesh Bamne, plaintiffs tried to prove that house no.513/1 and 513/2 are in the Gat no.507 and they are thirty to forty years old houses. He deposed about receipt of assessment (Exh.75 and 76) of house no.513/1 and 513/2 .In his cross-examination he admitted that he not filed documentary evidence to show that house no.513/1 and 513/2 are in Gat no.507, because Grampanchyat only have

the entry of house property and not of Gat number. He admitted that house assessment extracts (Exh.50 and 53) not have entry of Gat number. He denied that house no.513/1 and 513/2 are not in the Gat no.507.

61. plaintiffs also relied on evidence of P.W.No.6 Smita Suraywanshi, Gramsevak. She deposed that, she given notice (Exh.88) dated 18/02/2021 to Chandrakant Kalloli (Husband of plaintiff no.1) regarding Grampanchyat Milkat no.513/1. That notice bears her signature. In her cross-examination she deposed that, she can not say that she confirmed about complaint application of defendant no. 1 and without going through record she can not depose about it.

62. I perused notice dated 18/02/2021 (Exh-88). It was informed to Chandrakant Kalloli that his house no.513/1 is shown as house extract since 2002 and defendant no.1 filed complaint application at Grampanchyat that said land is of Gat no.507 and of his possession.

63. On the basis of this notice plaintiffs tried to prove that defendant no.1 himself complained about their house in Gat no.507 since 2002, so it shows that he admitted their possession in Gat no.507 i.e. suit property. But from the basis of this notice the possession of plaintiffs over suit property (47 R) is not established. plaintiffs also not filed on record copy of complaint application filed by defendant no.1 in Grampanchyat. Further this notice is only relating to house no.513/1 and not for both the houses. For a moment if we consider that plaintiffs have their houses in suit property, then also question remains

unanswerable that when plaintiffs constructed these houses in suit property. There is no pleading about it in the suit. Without pleading evidence can not be led and it can not be considered. Assessment extracts of these houses not prove that these houses are in Gat no.507.

64. Defendants filed assessment extracts at Exh.116 to 122. These extracts shows the house in the name of Annappa Kalloli from the year 1961 to 2000. Defendants also filed assessment extracts at Exh.123 to 126. These extracts shows the house in the name of sons of Annappa i.e. Rajaram and Chandrakant for the year 2000-2016. All these house extract at Exh.116 to 126 not mentioned the year of construction of these houses and also not mentioned how old these houses are. House extract at Exh.127 for the year 2015 to 2019 in the name of Rajaram first time shown the year of construction of house as 1981. Further the house extract at Exh.128 for year 2019 to 2023 in the name of Rajaram first time shown the house as thirty to forty years old. So from the entry of these houses in house extract can not be gathered that these houses are thirty to forty years old and these are existed in Gat no.507. Further evidence of P.W.No.4 Yogesh Bamne and P.W.No.6 Smita Suryawanshi is also not useful to prove said fact.

65. To prove their possession over suit property plaintiffs further relied on evidence of P.W.No.7 Ashok Gurav who was slip-boy in Gadhinglaj Taluka Co-operative Sugar Factory, Harali Budruk. He deposed that on 25/11/1998 and 26/11/1998 the crop of sugarcane from Gat no.507 of Annappa Kalloli brought

to sugar factory for crushing. He given sugarcane weight slip(Exh-95 and 96). These slips are in his handwriting and it bears his signature. In his cross- examination he deposed that, entry of farmers name whose sugarcane cut down and of Gat number were used to note down. He not filed such extract. He not confirmed about ownership of Annappa Kalloli in Gat no.507.

66. From perusal of sugarcane weight slip (Exh.95 and 96) it is seen that sugarcane from Gat no.507 collected in the name of Annappa Kalloli. From this evidence the fact that in the year 1998 Annappa Kalloli was in the possession of Gat no.507 is proved, but it is not proved that he was in possession of 27 R area of Gat no.507. It also not proves that from which and till what time he was in possession of suit property. Plaintiffs claiming possession over suit property till today, but they not led such evidence after the year 1998 till today. They also not led evidence to show that before the year 1998 during the lifetime of Kalbasi they were in the possession of suit property. The possession of plaintiffs for only year of 1998 can not be considered as peaceful, open, continuous and hostile possession over suit property, to establish the plea of adverse possession.

67. Plaintiffs not led evidence to show their possession over suit property for more than twelve years. They not examined single resident of village Hiddugi to prove their possession of twelve years over suit property.

68. P.W.No.1 admitted that defendant no.1 disconnected electricity supply of Gat no.507 in the year 2016 then also they

not given application to M.S.E.B. to continue the supply of electricity. If plaintiffs have actual possession of suit property and if they cultivate it by taking crops like sugarcane then they would have been applied to M.S.E.B for restoration of electricity supply. It is the pleading of the plaintiffs that they have borewell in the suit property, but they not filed single document to prove said fact.

69. P.W.No.1 Shobha and P.W.No.2 Suresh accepted the house of defendants in Gat no.507 which have entry in 7/12 extract, but plaintiffs failed to take entry of their houses in 7/12 extract of Gat no.507.

70. While argument plaintiffs learned advocate heavily relied on decision of temporary injunction application (Exh-5) and order of Appellate Court on it. Temporary injunction order was based on prima facie case put by plaintiffs on the basis of Hamipatra dated 11/02/1988. It is the pleading of the plaintiffs that on the basis of said Hamipatra plaintiffs no. 1 and 2 were kept in the possession of 27 R land of suit property. To prove said Hamipatra plaintiffs examined P.W.No.3 Vishnu Nilave. He was one of the attesting witness of Hamipatra and he signed it. In his affidavit of chief-examination he deposed about the contents of Hamipatra, but in cross-examination he not answered properly due to his old age. He denied all the contents of his chief examination and deposed that as per say of P.W. No.1 Shobha, his affidavit was prepared. He had no knowledge about the possession of plaintiffs and defendants in suit property. So the evidence of this witness not become helpful to the plaintiffs

to prove the Hamipatra. Surprisingly plaintiff examined this witness by assuming Hamipatra as original, when they filed photocopy of it on record.

71. Kalbasi died on 02/08/1990 then that Hamipatra must would be executed by Kalbasi during his lifetime, but the situation is not as such. Defendants denied its execution and signature of Baburao over it. As plaintiffs relied on said Hamipatra burden of proof of Hamipatra is on the plaintiffs.

72. Plaintiffs filed application at Exh.100 to give direction to defendants to file original Hamipatra on record. That application was allowed. Thereafter defendants filed application at Exh.204 for review of said order and that said application was rejected. So defendants filed Writ Petition No.11741/2025 in the Hon'ble High Court of Judicature at Bombay, Circuit Bench at Kolhapur. In which Hon'ble Bombay High Court set aside the both orders and granted liberty to the plaintiffs to take appropriate steps as per law to bring secondary evidence or seek discovery of document.

73. After the said order of Hon'ble Bombay High Court plaintiffs examined P.W.No.9 Satish Redekar, who is son of Subhana Redekar, stamp writer of Hamipatra. During his evidence he identified handwriting and signature of his father in photocopy of Hamipatra. He deposed that the contents of Hamipatra are true and correct. Since last many years plaintiffs have possession of suit property. From evidence of this witness the handwriting and signature of Hamipatra writer is identified, but the Hamipatra filed on record is not original but it is only

photocopy.

74. Learned advocate for plaintiffs argued that from the evidence of this witness Hamipatra can be considered as secondary evidence and be read in evidence after exhibiting it. He relied on Section 47 of the Indian Evidence Act regarding handwriting of the writer. This section relates to the handwriting of original document and not of photocopy. So his evidence cannot be considered as per Section 47 of the Indian Evidence Act.

75. As per Section 61 of Indian Evidence Act the contents of documents may be proved either by primary or by secondary evidence. As per section 62 of Indian Evidence Act primary evidence means the document itself produced for the inspection of the Court.

76. As per Section 65 (a) of Indian Evidence Act secondary evidence may be given of the existence, condition or contents of a document – (a) when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved. So it is mandatory on the part of the plaintiff that he must show that original Hamipatra is in the possession or power of defendants against whom the Hamipatra sought to be proved. Order 7 Rule 14 of Civil Procedure Code stated that, production of document on which plaintiff sues or relies.

1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in court when the plaint is presented,

and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

77. So as per this provision plaintiff not pleaded that said Hamipatra is in the possession of defendants. This point was also raised by learned advocate of defendants during hearing of application at Exh.100. Then also plaintiff failed to amend the plaint to show the custody of original Hamipatra. So plaintiffs failed to comply the provisions of Order 7 Rule 14 of Civil Procedure Code and Section 65 (a) of the Indian Evidence Act.

78. So mere identification of handwriting and signature of photocopy of Hamipatra can not be considered as proof of it. So the argument of learned advocate for plaintiffs can not be accepted to read Hamipatra in evidence as proved. After recording of the evidence of P.W.No.9 Satish Redekar plaintiffs closed their evidence.

79. Learned advocate for the plaintiffs referred citation of *Tharammel Peethambaran and Another v/s T.Ushakrishnan and Another 2026 DGLS (SC) 142*, it is held by Hon'ble Supreme Court that *primary evidence is the rule, while secondary evidence is an exception admissible only in the absence of primary evidence. Before secondary evidence can be admitted, the party relying on it must lay a factual foundation.*

This involves two steps, first the party must prove that the original document actually existed and was executed. Secondly, the party must establish valid reasons as to why the original cannot be furnished. Secondary evidence is inadmissible until the non-production of the original is accounted for in a manner that brings the case within the specific exceptions provided in section 65 of Indian Evidence Act. If the foundational facts, such as the loss of the original or the explanation for its non-production, are not established, the court cannot legally allow the party to adduce secondary evidence.

80. As per liberty granted to the plaintiffs to bring secondary evidence or to seek discovery of document plaintiffs examined Satish Redekar as their witness. In his evidence photocopy of Hamipatra not proved and it also not considered as secondary evidence. As per ratio of above citation of *Tharammel* plaintiffs failed to lay the procedure prescribed by section 65 of the Indian Evidence Act and more particularly as stated by Hon'ble Bombay High Court in their order dated 28/11/2025 in Writ Petition No.11741 of 2025 regarding Order 11, Rule 12 and 13 of the Civil Procedure Code about discovery and inspection of document. So the most important evidence of plaintiffs i.e. Hamipatra is not proved. So plaintiffs failed to prove that how they came in the possession of suit property.

81. Defendants came with clear case of their title over suit property on the basis of Will, probate and mutation entry no.635. D.W.No.1 Sunildatta (Def. No.1) examined himself at exhibit 101. In his affidavit of chief-examination he deposed as

per the contents of his written statement. In his cross-examination he deposed that his father Baburao was most younger brother. His father was residing separate with his mother since year 1960. Kalbasi has no relation with their family. He denied that plaintiffs no. 1 and 2 have their houses in suit property and they are entered in their name. He deposed that those entries are hollow. He denied that Kalbasi had given possession of suit property to plaintiffs. He also denied that his father Baburao made false and bogus Will of Kalbasi. He denied about the contents of Hamipatra. He admitted the entry of borewell on 7/12 extract, as of them. He also denied that in the year 1998 Annappa Kalloli send sugarcane crop from suit property to sugarcane factory. He also denied about his knowledge of peaceful and continuous possession of plaintiffs over suit property.

82. He admitted that in Civil M.A. 69/1991 for getting probate plaintiffs or their predecessor was not party. He denied that he given complaint application about the houses of plaintiffs in suit property. He deposed that he given said application about the entry of these houses. He not filed till today suit regarding houses of the plaintiffs, their ownership and possession. He admitted that till his lifetime Kalbasi never complained about possession of plaintiffs over suit property. He denied that as plaintiffs have their houses in suit property Grampanchyat entered their names as owner and possessor.

83. From the above evidence of D.W.No.1 Sunildatta nothing came on record which shows the possession of the

plaintiffs over suit property. He admitted that till lifetime Kalbasi never complained about possession of plaintiffs over suit property. For the moment even though we presume the possession of the plaintiffs over suit property, then also hostile possession of plaintiffs when started over suit property is not proved. Permissive long possession for number of years not constitute adverse possession. Plaintiffs also not led evidence to show that they are put in possession by Kalbasi. Plaintiffs also not led evidence that Annappa and Shivappa had each given Rs.5000/- to the Kalbasi. Plaintiffs also not led any evidence to show that they are in possession of suit property by partition. P.W.No.8 Swapnil deposed in his cross-examination that he not filed document to show that 20 R land given to Shivappa by partition. So plaintiffs not proved the mode of their possession over suit property. Mere pleading without proof is not sufficient.

84. After filing of written statement plaintiffs not challenged Will of Kalbasi executed in favour of Baburao and probate given to Baburao. Section 41 of Indian Evidence Act speaks about conclusive proof of probate which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant. That anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or

should be his property.

85. Defendant filed certified copy of Civil M.A. No. 69/1991 and order below Exh.1 of it at (Exh.177). Admittedly, Baburao not made plaintiffs or their predecessor as party to the probate proceeding, but plaintiffs till today not challenged it. As per section 41 of Indian Evidence Act probate is conclusive proof of the validity, genuineness and finality of a deceased person's Will. Probate is a judgment-in-rem means it is binding not just on the parties involved in the case, but on the entire world. Accordingly probate (Exh.178) along with the letters of administration dated 17/10/1992 in the name of Baburao in respect of the Will executed by his maternal uncle deceased Kalbasi on 27/05/1974 issued. On the basis of said probate mutation entry number 635 (Exh.180) dated 25/02/1993 entered in the name of Baburao. On the basis of which name of Baburao entered to 7/12 extract of Gat no.507 (Exh.174 and 175).

86. Learned advocate of plaintiffs argued that lease property can not be gifted or given in Will. For this argument he relied on *Kashinath Laxman Waghmare V/s Ganpat Tukaram Kashmire and others 2003 (3) Mh.L.J. 229*, it is held by Hon'ble Supreme Court that a tenant cannot assign tenancy rights in agricultural land by an instrument styled as a Will. And such an assignment would be in contravention of section 27 of the *Bombay Tenancy Act*.

87. Defendants filed mutation entry number 50 (Exh.176). From perusal of it is seen that after proceeding of

Section 32 G of the Maharashtra Tenancy and Agricultural Land Act, Kalbasi (Tenant) gave consideration of Rs.1600 to Virgonda Desai (Owner) as per order of Tahsildar dated 14/03/1974. Accordingly name of owner is deleted and name of Kalabasi was entered as per mutation entry number 50 dated 25/03/1977. From this mutation entry it is not proved that on which date Kalbasi paid amount of Rs.1600/- and on which date he became the owner of Gat No.507.

88. Here learned Advocate for the plaintiffs questioned the power of testator (Kalbasi) to execute Will of suit property in favour of Baburao. Plaintiffs not pleaded these facts in the plaint, so no issue in that regard is framed and no evidence is led by both the parties. Therefore argument without pleading can not be considered. So with due respect I mention here that, without pleading, issue and evidence, the above citation of *Kashinath Waghmare* is not applicable to the case in hand.

89. As per ratio of above citation *Ravinder Grewal* the suit of the plaintiffs for plea of adverse possession is maintainable and plaintiffs can use it as sword.

90. When defendants have strong title supported by revenue entries such as 7/12 extract at Exh.200 for the year 2015-2016 and 8 A extract(Exh.199), the heavy burden casted on plaintiffs to prove their case and to rebut the version of defendants. Plaintiffs failed to plead necessary ingredients for plea of adverse possession. When there is no pleading about the starting day of hostile possession of plaintiffs to defendant, extent of their possession, knowledge of their hostile, open,

public and continuous possession to defendant then the plea of adverse possession can not be sustainable. So they are not entitled for declaration of title by adverse possession to suit property. Accordingly, I answered issue no.2, 3, 6 and 8 in the negative.

AS TO ISSUE NOS. 1, 4 AND 7 :-

91. All these issues are of same nature and interconnected with each other, so to avoid repetition of facts and evidence I took it for discussion together. Plaintiffs claim their possession over suit property by plea of adverse possession. From all above discussion it is proved that plaintiffs failed to plead and prove their open, continuous and hostile possession of twelve years over suit property. For this claim of possession he relied on houses of plaintiffs no.1 and 2 in suit property. From the house extracts (Exh. 116 to 126) it is not proved that these houses are in suit property. Plaintiffs no. 1, 2 and 3 failed to lead evidence about their possession of suit property respectively for area of 27 R and of 20 R. Sugarcane weight receipts (Exh. 95 and 96) are only for year 1998, from these receipts possession of plaintiffs over suit property for more than twelve years not established.

92. D.W.No.1 Sunildatta admitted that he not filed suit regarding possession and ownership about houses of plaintiffs in suit property. This admission not proves the case of the plaintiffs.

93. Here I would like to refer citations relied by learned

advocate for defendants. *In Pandhiyar Prahladji Chenaji (D) Through Lrs v/s Mainben Jagmalbhai through LRS. And Others 2022 DGLS (SC) 253, It is held by Hon'ble Supreme Court that in the present case the plaintiff, who has failed to get any declaratory relief and the defendant no.1 is held to be a true and absolute owner on the basis of the registered sale deed on payment of full sale consideration thereafter the plaintiffs possession cannot be said to be "Lawful Possession". Therefore, the plaintiff is not entitled to any permanent injunction against the true owner in the instant case.*

Once the rights of the parties are adjudicated and the defendant no.1 is held to be the true owner on the basis of the registered sale deed and on payment of full sale consideration, it can be said that due process of law has been followed and thereafter the plaintiffs is not entitled to any permanent injunction against the true owner. The plaintiffs had no title and after dismissing the suit qua the cancellation of the registered sale deed and the declaration, the plaintiffs is not entitled to relief of permanent injunction against defendant no.1 the true owner.

Due process or due course condition is satisfied the movement the rights of the party adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against

dispossession), is not of much consequence.

94. Learned advocate for plaintiffs argued that the defendants not filed suit against them for recovery of possession or permanent injunction and also not filed counter claim for such prayer. Defendants can not oust plaintiffs from suit property without following due procedure of law. For this argument he relied on following citations :-

(A) Smt.Saraladevi Bandawar v/s Shailesh Namdeo AIR 1996 Bombay 98, it is held by Hon'ble Bombay High Court, Nagpur Bench that person in possession can claim it against everyone including rightful owner. Rightful owner cannot evict him by force. He has to follow due process of law.

(B) Krishna Ram Mahale (Dead) by his Lrs. V/S Mrs.Shobha Venkat Rao (1989) 3 BOM CR 364 It is held by Hon'ble Apex Court that,where a person is in settled possession of property even on assumption that he had no right to remain on the property he can not be dispossessed by owner except by recourse to law.

95. In view of ratio in above citation of *Pandhiyar Chenaji*, it is not necessary that defendant has to file suit for recovery of possession. He appeared and contested the suit by filing written statement and documents before court, then due process is followed.

96. Plaintiffs failed to lead evidence to prove that on the date of filling suit they are in possession of suit property. While defendant came with evidence of his ownership and possession

supported by probate and revenue entries.

97. Learned advocate for defendants relied on *Balkrishna Dattatraya Galande v/s Balkrishna Rambharose Gupta and Another*. 2019 DGLS (SC) 176, it is held by Hon'ble Supreme Court that the conclusion of the trial court that the first respondent plaintiffs vacated the suit property since the year 1991 is fortified by yet another circumstance viz., nonpayment of rent by the respondent plaintiffs, admittedly, ever since withdrawal of earlier suit RCS No.1004/1988, the first respondent plaintiffs has not paid any rent from the year 1991. Be it noted, that the appellant-defendant had also not initiated any proceedings claiming rent or arrears of rent from the first respondent- plaintiffs. After filing of the suit in 2004, the first respondent-plaintiffs has sent a cheque dated 14-05-2005 for Rs.10,395/- towards payment of rent for 189 months thereby admitting that he has not paid the rent for more than fifteen years. The trial court also observed that the first respondent-plaintiffs has suppressed the material fact that he has not paid the rent from 1991. The trial court observed that the first respondent-plaintiffs has not come to the court with clean hands and that he cannot sustain his claim for the equitable relief of permanent injunction.

Upon appreciation of the oral and documentary evidence, the trial court rightly held that the first respondent plaintiffs failed to prove his actual and physical possession over the suit property on the date of the suit.

98. As plaintiffs failed to prove their peaceful possession

over suit property the question of obstruction of their peaceful possession over suit property by defendants does not arise. As per ratio of above citation *Balkrishna Galande* plaintiffs failed to prove that on the date of the suit they were in possession of suit property. Therefore, plaintiffs are not entitled to the relief of permanent injunction against the true owner i.e. defendants. So I answered issue no.1, 4 and 7 in the negative.

AS TO ISSUE NO. 5:-

99. Plaintiffs described suit property in plaint paragraph no.1 and filed rough sketch along with plaint. In rough sketch they only mentioned directions as East, West, North and South, but not mentioned which properties are situated at these four directions.

100. In plaint paragraph no.11 plaintiffs pleaded that their predecessor Annappa was in possession of 27 R area of North side in Gat no.507 and adjacent to this area plaintiffs no.3 have area of 20 R. Plaintiffs not given four boundaries of suit property, but they pleaded the North side area of 27 R and adjacent to it 20 R from Gat No.507 as suit property. From this description, suit property can be identified. So suit is not barred by provision of Order 7 Rule 3 of Civil Procedure Code. Accordingly I answered issue no.5 in the negative.

AS TO ISSUE NO.9 :-

101. Plaintiffs filed said suit for declaration and perpetual injunction. They valued the suit for amount of Rs.3,000/-. On this amount they paid court fees of Rs.600/- as per Section 6

(iv)(j) of the Maharashtra Court Fees Act. As per said provision Court fees paid by plaintiffs is just and sufficient. So I answered issue no.9 in the affirmative.

AS TO ISSUE NO.10 :-

102. Plaintiffs failed to prove the contents of the plaint. It does not mean that they pleaded false or vexatious contents. So defendants are not entitled for compensatory costs as prayed by them. So I answered issue no.10 in the negative.

AS TO ISSUE NO.11 :-

103. From all above discussion and findings of above issues plaintiffs are not entitled to the declaration that they are owners of suit property by plea of adverse possession and for permanent injunction. So suit of the plaintiffs is liable to be dismissed with costs. Hence, in answer to issue no.11, I pass following order.

ORDER

1. Suit is dismissed with costs.
2. Draw decree accordingly.

Place: Gadhinglaj
Date :16/04/2026.

D. M. Pawar
2nd Jt. Civil Judge Junior Division,
Gadhinglaj.