



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 945 OF 1994
WITH
CIVIL APPLICATION NO.2125 OF 1994

M/s. Shri Tirthankar Co.]
A firm carrying on business at Gogalewadi,]
Goregaon (East) Bombay 400 063]... Appellant

V/s.

1. Adyaprasad Hingoo Mishra]
Since deceased by his heirs and]
Legal representatives]
1(a) Lilawati Adyaprasad Hingoo Mishra]
(Since deceased through legal heirs 1 (b) to 1 (f))]
1(b) Ankaleshwar Adyaprasad Hingoo Mishra]
1(c) Ajay Kumar Adyaprasad Hingoo Mishra]
1(d) Vinod Kumar Adyaprasad Hingoo Mishra]
1 (e) Sanjay Kumar Adhyaprasad Hingoo Mishra]
1 (f) Jagdish Kumar Adhyaprasad Hingoo Mishra]

2. Harishankar Hingoo Mishra]
(Since deceased through legal heirs)]
2 (a) Rajmani Harishankar Mishra]
2 (b) Kaushal Harishankar Mishra]
2 (c) Rajesh Kumar Harishankar Mishra]
All residing at Room No. 103, Hari Shankar Mishra]
Chawl, Gotewadi, Aarey Road, Goregaon (E)]
Mumbai 400 006]... Respondents

Mr. Drupad Patil a/w Mr. Rohan Karande and Mr. Sandeep
Wankhede i/by Divekar & Co. for Appellant.
None for Respondents.
Mr. Swayam S. Chopda, OSD, Court Receiver.

CORAM : KAMAL KHATA, J.
RESERVED ON : 3RD FEBRUARY 2026.
PRONOUNCED ON : 6TH FEBRUARY 2026.

JUDGMENT:

1. The present Appeal arises from the Judgment and Decree dated 4 March 1994 passed by the learned Judge of the Bombay City Civil Court, Mumbai in Suit No. 5989 of 1974, whereby the Appellant's suit for possession of land admeasuring 688.50 sq. ft. from out of CTS No. 185, village Pahadi, Goregaon, Taluka Borivali was dismissed, and the Defendants were declared owners by adverse possession in respect of 170 sq. yards (142.60 sq. mtrs.). The parties are referred to by their original nomenclature.
2. In spite of service, none appeared for the Respondents.
3. The Appeal has been pending since 1994 and was, therefore, heard finally.
4. During the pendency of the Appeal, by order dated 7 September 1995 passed in Civil Application No. 3125 of 1994, this Court directed the Court Receiver, High Court, Bombay to measure the area in possession of the Defendants through a qualified Architect.
5. Pursuant thereto, an Architect's report dated 13 October 1995 was submitted, which recorded that the Defendants were in possession of 38 sq. metres (409 sq. ft.) only from out of CTS No.

185, as demarcated and shown in orange colour in the annexed plan.

6. By a subsequent order dated 10 November 1995, this Court directed the parties to maintain status quo in respect of the suit property as reflected in the said report, which order has attained finality and continued throughout the pendency of the Appeal.

7. Learned counsel for the Appellant, on instructions, stated that the parties have adhered to the order of status quo dated 10 November 1995 for over three decades and that the Appellant has no objection if the Respondents are declared owners by adverse possession in respect of 38 sq. metres (409 sq. ft.) from out of CTS No. 185, as recorded in the Court Receiver's report dated 13 October 1995.

8. In view thereof, the Appellant does not press the Appeal on merits and, in the alternative, seeks only modification of the decree passed by the Ld. Trial Court to the limited extent of bringing it in conformity with the said report and the long-standing status quo order.

9. Learned counsel for the Appellant, relying upon Order XLI Rules 31, 32 and 33 of the Code of Civil Procedure and the decision of the Hon'ble Supreme Court in *Chandi Prasad v. Jagdish Prasad*¹, submits that this Court, in Appellate jurisdiction, is empowered to

¹ (2004) 8 SCC 724

vary or modify the decree, whereupon the decree of the Trial Court stands merged in the appellate decree.

10. Since 1994, for more than thirty years, the parties have regulated their possession strictly in accordance with the status quo order dated 10 November 1995.

11. In these peculiar facts and circumstances of the case, and having regard to the unequivocal statement made on behalf of the Appellant, this Court is of the view that the ends of justice would be met by accepting the said statement and modifying the impugned decree accordingly

12. Accordingly, in exercise of Appellate Powers under Order XLI Rules 32 and 33 of the CPC, this Court deems it appropriate to modify the impugned Judgment and Decree, strictly in terms of the area recorded in the Court Receiver's report dated 13 October 1995.

ORDER

- (a) First Appeal No. 945 of 1994 is partly allowed.
- (b) The Judgment and Decree dated 04 March 1994 passed by the learned Judge of the City Civil Court, Bombay in Suit No. 5989 of 1974 is modified as follows:
- (c) Suit No. 5989 of 1974 stands dismissed, with no order as to costs.

- (d) It is, however, declared that the Defendants have acquired ownership by adverse possession only in respect of the portion of land admeasuring 38 sq. metres (409 sq. ft.) from out of CTS No. 185, village Pahadi, Goregaon, as shown in orange colour in the plan annexed to the Architect's report dated 13 October 1995, produced on record through the Court Receiver in Civil Application No. 3125 of 1994.
- (e) Civil Application No.2125 of 1994 is disposed of.
- (f) No order as to costs.

(KAMAL KHATA, J.)