

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 203 OF 2015
WITH
CIVIL APPLICATION NO. 5094 OF 2015**

Raju s/o. Chabu Ingle	..	Appellant
	Versus	
Babasaheb s/o. Manjaram Ingle & Ors.	..	Respondents

Mr. A.S.Bajaj, Advocate for the appellant.
Mr. V.R. Dhorde, Advocate for respondent No.1.

**CORAM : A.V. NIRGUDE, J.
DATED : 23.07.2015**

P.C. :-

1. This Second Appeal is filed by the obstructionist. He obstructed decree of redemption of a mortgage. The mortgagor-Manjaram came with a case that he had mortgaged his four acres land to Chabu, who happens to be father of obstructionist. He sought redemption and succeeded in getting decree of redemption despite Chabu's contest to the suit till the Supreme Court. Now, the obstructionist comes with a case that Manjaram had no title to the suit property. He comes with a case that in 1974, land Survey No.241 was purchased by both Manjaram and his brother Gopal. They thus became joint owners of this land. Gopal was father of Chabu. Gopal and Majiram, who were brothers, did not partition the land but in the guise of mortgage transaction, Manjaram handed over suit land to Gopal's son-Chabu. The obstructionist thus says that

the suit land was his ancestral property. This objection is now not permissible because the suit was fought between Manjaram on one side and Chabu, father of obstructionist on the other. The defence raised now goes to the root of the case in as much as the locus of Manjaram-mortgagor is being challenged. Such defence could have been raised by Chabu-mortgagee. If such defence was not raised at relevant time, the obstructionist cannot raise it now. The obstructionist also comes to the Court with a plea that his father-Chabu is now disabled due to ill health, indicating thereby that he was his father's representative. In other words, it can be said that the obstructionist is putting forward a new defence to the original suit. It is rather too belated attempt and not permissible.

2. The Courts below rejected the application seeking obstruction and I do not find any error in it. No substantial question of law arises in the second appeal.

3. The Second Appeal stands dismissed.

[A.V. NIRGUDE, J.]