

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

SECOND APPEAL NO. 210 of 2011

(Shri Vasant Rao Ganpatrao Khorate Appellant
versus
Sou. Rekha Shankar Potdar and anr Respondents)

AND

SECOND APPEAL NO. 168 of 2011

(Shri Vasant Rao Ganpatrao Khorate Appellant
versus
Shri Appasaheb Manohar Magdum
and others Respondents)

Mr. Sudam Kale, Advocate, I/b Mr. S.K. Shinde,
Advocate, h/f Mr. Satyajit Dighe, Advocate for the
appellants in both appeal.

None for the Respondents in SA No. 210 of 2011
Mr. Sandeep Phatak, Advocate, h/f Shri Sugandh B.
Deshmukh, Advocate, for Respondent Nos. 2 to 5 in
S.A. NO. 168 of 2011

CORAM : R.K. Deshpande, J.
DATED : 24th JUNE, 2015.

P.C.

Regular Civil Suit No. 80 of 1991 filed by
the plaintiff for removal of encroachment was
dismissed by the trial Court on 13.11.2002. Regular
Civil Appeal No. 79 of 2002 and 17 of 2005 preferred
by the plaintiff were dismissed by the lower
appellate Court on 29.10.2010. Hence, these two

second appeals are preferred by the original plaintiff.

The plaintiff claimed ownership over 15R land out of Survey No. 52/1+2A on the basis of sale deed executed through Court Commissioner in Special Civil Suit No. 28 of 1983. The grievance in the said suit was that the defendants have encroached upon his land. Both the courts have held that the plaintiff has failed to establish encroachment on the suit land by the defendants. The finding is based upon the report of the Cadestral Surveyor. The defendants are not disputing the ownership of the plaintiff along with one Tatyasaheb Kulkarni over 15R of land. However, they are claiming to be the owner of 30R of land in the said survey number. According to them, they have made construction in their own land and there is no encroachment over 15R of land belonging to the plaintiff.

Both the Courts below have recorded the concurrent findings. The encroachment is not established. It is a question of fact. The second appeals are dismissed.

(R.K.DESHPANDE, J.)