

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

SECOND APPEAL NO. 363 of 2013

(Namdeo Machindra Tonape	Appellant
versus	
Ramchandra Kondiba Tonape	
and others	Respondents)

Mr. R.S.Alange, Advocate for appellant.
Mr. Ravi G.Shinde, Advocate, for respondents

CORAM : R.K.Deshpande, J.
DATED : 4th AUGUST, 2015.

P.C.

The trial Court passed a decree in Regular Civil Suit No. 182 of 1990 on 24.11.2000. The plaintiffs are declared to be owners of the suit property mentioned in Map Exh.100 in red colour admeasuring 69R of land and the defendants are directed to deliver the possession. The trial Court also passed a decree holding that the plaintiffs are entitled to mesne profit at the rate of Rs. 700/- per annum from the defendants from the date of the suit till delivery of the possession of the suit property. The defendants are restrained from interfering with the possession of the plaintiffs over the suit property. Civil Appeal No. 31 of 2001 filed by the defendants is dismissed on 04.01.2013. Hence, the defendant No.1 is before this Court in this second appeal.

Both the Courts below have considered and decided the issue as to whether the plaintiffs proved their ownership over the disputed encroached portion of the land. The issue is answered in the affirmative. It is held that the defendants have encroached over 69R of the land belonging to the plaintiffs. The decree has been passed.

The learned counsel for the appellant has urged that there was no relief of declaration of ownership claimed in the plaint and the Courts ought not to have, therefore, passed such a decree.

It is apparent from the issues framed by the trial Court and the points for determination framed by the appellate Court that the issue regarding ownership of the plaintiffs over the suit property was framed, the parties have led evidence and the findings are recorded. The defendants claim for ownership over the suit property on the basis of adverse possession has been rejected. In view of this, no substantial question of law arises for consideration, the second appeal is dismissed.

(R.K.DESHPANDE, J.)