

**APPEAL FROM ORDER NO.380 OF 2015
WITH
CIVIL APPLICATION NO.649 OF 2015**

Salauddin Badruddin Kazi and Another ... Appellants
vs.
Vilas Sahadeo Mhaske and Others ... Respondents

Mr. Y.H. Muchhala, Senior Advocate a/w. Mr. S. Nachan and Ms. Rashda Ainapore i/b. M/s. Judicare Law Associates, for the Appellants.

Mr. Y.S. Jahangirdar, Senior Advocate i/b. M/s. Joel Carlos, for
the Respondent Nos. 1 to 6.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 24th NOVEMBER, 2015

P.C.:

. By this Appeal from Order, the order dated 14th October, 2014 passed by the learned Civil Judge (Senior Division), Pune is challenged.

2. The Appellants who are the original Plaintiffs No. 1 and 2 who filed suit for injunction against the Respondents/original Defendants to the interim application for temporary injunction in respect of their property is rejected by the Court. Hence, this Appeal.

3. The Plaintiff No. 1 and 2 have purchased two acres of suit land each by a sale deed on 21st April, 1989. The Survey No. 313/2/3 was purchased by Plaintiff No. 1 and Survey No. 313/2/1 by Plaintiff No. 2. It is the case of the Plaintiffs that thereafter Defendant No. 1 entered into a sale deed on 8th June, 1989 in respect of some portion of Survey No. 313/1/2. The said land purchased by the Defendant is adjoining land to the land purchased by the Plaintiffs.

4. It is the case of the Plaintiffs that the Defendants in the year 2012 started constructing a compound wall between the land of the Defendants and the lands of the Plaintiffs. However, the fencing was constructed on the land of the Plaintiffs. It is the case of the Plaintiffs that the Defendants have encroached upon nearly 20 gunthas of the land of both the Plaintiffs. Therefore the Plaintiffs filed a suit for injunction.

5. The learned counsel for the Appellant has submitted that the Plaintiffs have registered a sale deed which is first in time i.e. in April, 1989 and the Plaintiffs have produced a plan which is on page No. 45 of the Appeal from Order disclosing the encroachment by the

Defendants in the land of the Plaintiffs. So also he relied on page 95 which shows that the land purchased by the Plaintiffs from one Mr. Pandit. He submitted that the learned trial Judge ought to have accepted and relied on this plan produced by the Plaintiffs disclosing the encroachment made by Defendant No. 1. However, the learned Judge has failed to appreciate the documents produced by the Plaintiffs and did not grant injunction.

6. Per contra, the learned counsel for the Respondents has submitted that the suit is filed in the year 2012 and till today no injunction is granted in favour of the Plaintiffs. The Defendant No. 1 has executed a gift deed in favour of Defendant No. 6 and at present he is in a position of the land which is alleged to be encroached.

7. Perused the order dated 14th October, 2014 passed by the learned Civil Judge (Senior Division), Pune. The title of the sale deed of the parties is not disputed. The question is the area and the boundaries dividing the lands of the Defendants and Plaintiffs are in dispute. Thus, this being a question related to the area of the land of the Plaintiffs, it is necessary to get the measurement of the said land.

So also the measurement of the adjoining land to fix and ascertain the boundaries and to get the report of the Surveyor on record. It is difficult for the Court to give any finding in respect of the encroachment of the land of the Plaintiffs. In view of this, the order of the trial Court is not disturbed.

8. Accordingly, the Appeal from Order stands disposed of.

9. However, the Appellants may apply before the trial Court for seeking the appointment of the Surveyor for the measurement of the Plaintiff's land, so also the adjoining lands.

(MRS.MRIDULA BHATKAR, J.)