

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

SECOND APPEAL NO. 400 OF 2015

Keda Motiram Bagul	... Appellant.
V/s.	
Sahebrao Kashinath Aher & Ors.	... Defendants.

Mr. Amit Borkar for the appellant.
Mr. M. N. Sandhyanshiv for the respondent nos. 1 to 4.

**CORAM : K. K. TATED, J.
DATED : 09/09/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This appeal is preferred by the plaintiff challenging the concurrent findings of fact recorded by both the Courts below.

3 In the present proceeding, the Appellant plaintiff filed Regular Civil Suit no. 24 of 2008 in the Court of Civil Judge, Junior Division, Satana, District Nashik for an order of injunction restraining defendants from encroaching 8 gunthas of land from land bearing Gat No. 99/1.

4 The Trial Court on the basis of the Commissioner Report as well as the deposition of the parties held that the plaintiff failed to prove his case for an injunction restraining the defendants from encroaching on his suit property. Apart from that the Trial Court in paragraph 6 recorded that the Regular Civil Suit no. 81 of 2005 filed by the plaintiff in respect of the same suit property is pending for hearing and final disposal off on its own merits. Hence, the Trial Court by decree dated

23.12.2010 dismissed the plaintiff's suit.

5 Being aggrieved by the decree passed by the Trial Court, the plaintiff preferred Regular Civil Appeal no. 10 of 2011 in the District Court. The Appellate Court also held that plaintiff failed to prove his case for an order of injunction. The Appellate Court on the basis of earlier Vahivat Case (Revenue matter) held that to protect the illegal construction carried out by the plaintiff on a road, he filed the present proceeding. Hence, the Second Appeal.

6 The learned counsel for the plaintiff placed on record the copy of plaint, written statement and the deposition of the parties.

7 The learned Counsel for the plaintiff submits that both the Courts below erred in coming to the conclusion that plaintiff failed to produce the cogent evidence in support of his case. He further submits that both the Court below failed to consider the Court's Commissioner report in proper way. He submits that the defendants encroached on the plaintiff's land to the extent of 8 gunthas. On the basis of these submissions, the learned counsel for the plaintiff submits that the decree passed by the both the Courts below required to be set aside.

8 On the other hand, the learned counsel for the respondents vehemently opposed the present Second Appeal. He submits that both the Court below concurrently held that the plaintiff failed to produce any evidence in support of his case. As there is concurrent finding of facts recorded by both the Court below, this Court should not entertain the present Second Appeal.

9 I heard both the sides at length. I have gone through the additional compilation of documents filed by the plaintiff. The plaintiff filed the suit for an injunction restraining the defendants from encroaching on a suit land bearing Gat No. 99/1. It is to be noted that the plaintiff already filed Regular Civil Suit no. 81 of 2005 in respect of same suit land and which is pending for hearing and final disposal on its own merits. Not only that, in revenue proceeding also the Court has not given any relief to the plaintiff. It is to be noted that in the present proceeding, plaintiff has not made any application either in Trial Court or in Appellate Court for appointment of T. I. L.R to measure the suit land to find out exact encroachment, if any, made by the defendants.

10 The Apex Court in the matter of *Bellachi (Dead) by LR Vs. Pakeeran, 2009(12) SCC 95* held that the High Court, in Second Appeal can interfere with the concurrent findings of facts only if substantial question of law arises in the appeal.

11 Considering the submissions made by the learned counsel for the plaintiff/appellant and after going through the judgment and decree passed by both the Courts below and as Regular Civil Suit no. 81 of 2015 is pending in respect of same property, I do not find any substantial question of law involved in the present Second Appeal.

12 Hence, Second Appeal stands rejected.

(K.K.TATED, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.