

Sequeira

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

SECOND APPEAL NO. 1017 OF 2012

Shri Eknath Tukaram Patil ... Appellant.
V/s.
Shri Tatoba Dattu Magdum & ors. ... Respondents.

Mr.Prashant Bhavake, for the Appellant.
None for Respondents.

***CORAM : N.M. Jamdar, J.
Thursday 21 April, 2016.***

P.C. :-

By this Appeal, the Appellant challenges the concurrent Judgment and orders passed by the learned District Judge, Kolhapur and learned Civil Judge, Junior Division, Kagal dismissing the Appeal and Suit filed by the Appellant.

2. Both the Courts have held that the Appellant is the owner of the suit property and he is lawfully in possession of the same. The relief of injunction has been rejected on the ground that the Respondents are not trying to encroach on the property of the Appellant. The learned counsel for the Appellant by relying on admissions in the cross-examination of the Respondents sought to contend that the Respondents have made their intention clear that they plan to encroach and carry out construction. Both the Courts have taken note of this evidence of the Respondents and

have come to the conclusion that Respondents have shown no intention to encroach upon the property, except the bare words of the Appellant. In spite of the dismissal of the Suit the Respondents have not carried out any encroachment or disturbance. Since the Suit and Appeal are dismissed only on the ground that Respondents do not intend to encroach upon the property, therefore in case the Respondents do threaten to carry out encroachment, rights of the Appellant are not foreclosed. In the circumstances, no question of law arises. Second Appeal is dismissed.

(N.M. Jamdar, J.)