

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

SECOND APPEAL NO. 418 OF 2014

Shankar Rawaji Jadhav

... Appellant

Vs

Budhaji Tanaji Jadhav

... Respondents

Mr. Shantanu Chandrate i/b. Khandeparkar & Asso. for the Appellant.

Mr. Machhindra Patil for respondent.

CORAM : N. M. Jamdar, J.

DATE : 20 APRIL, 2016

P.C. :

1 By this appeal, the appellant challenges the concurrent findings and orders passed by the District Judge, Sindhudurg and Civil Judge, Junior Division, Devgad, dismissing the appeal and the suit filed by the appellant. The suit was filed by the appellant taking objection to the construction of latrine by the respondent. The construction was objected on the ground that it is illegal and it is causing nuisance to the appellant.

2 As regard the contention of the learned counsel for the appellant regarding legality of the structure, it has come on record that the toilet was built under the Scheme of the Government for which grant was given to the persons

from weaker section for construction of toilet. As regard the permission of the Grampanchayat, both the courts have held that there is a difference between construction without permission and in illegal construction and that, the said latrine can be regularized. The construction is admittedly on the land of the respondent. As regard nuisance in general is concerned the Medical Officer has submitted his report stating that the latrine in question does not cause any danger to public health. As regard nuisance and annoyance to the appellant is concerned both the court on assessment of evidence have rendered a factual finding, considering the location and the direction, that it does not cause nuisance to the appellant. It is not possible to interfere with this finding of fact. In the second appeal under section 100 of the Civil Procedure Code. No question of law, much-less substantial question of law arises.

3 The second appeal is accordingly dismissed.

(N. M. Jamdar, J.)