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

*SECOND APPEAL NO. 695 OF 2015
with
CIVIL APPLICATION NO. 1462 OF 2015*

Laxman Bhairu Waghmode. ... Appellant/Applicant.

V/s.

Sulabai Dada Devkar and Anr. .. Respondents.

Ms. Prabha Badadare for the Appellant/Applicant.

CORAM : N.M. Jamdar, J.

03 August, 2016.

Oral Order :-

The Appellant challenges the Judgment and Order passed by the District Judge, Satara dated 5 January 2015 allowing the Appeal filed by the Respondent – Orig. Plaintiff decreeing the Suit and directing the Appellant to remove the encroached portion of 5 sq. mtrs. from the Suit land.

2. The learned Counsel for the Appellant firstly contended that the Appellate Court has not framed any issue as regard limitation and neither there is any discussion in respect of the same and it was necessary as the learned Civil Judge had framed specific

issue as regard limitation and had answered the same against the Respondent No.1 – Orig. Plaintiff. This submission cannot be accepted. The learned Civil Judge had concluded against the Respondent – Orig. Plaintiff on the ground of limitation holding that the Respondent No.1 – Orig. Plaintiff is not the owner of the property and taking that position into account and applying Article 64 of the Limitation Act, the issue was held against the Respondent No.1 – Orig. Plaintiff. The learned District Judge, after assessment of evidence, held that the Respondent No.1 – Orig. Plaintiff is the owner of the property. In that circumstances, Article 64 of the Limitation Act does not apply and the issue of limitation therefore did not survive.

3. The learned Counsel for the Appellant then submitted that the Respondent No.1 – Orig. Plaintiff has failed to prove the title. The learned District Judge has considered the issue of title. It is found that the Suit property is a Inam Land of Class III. Name of the Krishna Dada and Nathu of Janai Devi have been mutated. Name of Respondent No.1 – Orig. Plaintiff has also been mutated. The Respondent No.1 – Orig. Plaintiff has been cultivating the Suit land and this position has continued for a long period of time. The Appellant on the other hand had asserted that the predecessor of the Respondent No.1 – Orig. Plaintiff had transferred the Suit land in the year 1948. The Appellant except the bare words, had not produced anything on record to show his ownership. The learned District

Judge, therefore, relying on provision of Section 110 of the Evidence Act accepted the title of the Respondent – Orig. Plaintiff. There is no error in this conclusion.

4. The learned Counsel for the Appellant then submitted that the map which is relied upon by the Appellate Court was given up by the Respondent No.1 – Orig. Plaintiff by amending the plaint and therefore, should not have been relied upon. This submission also cannot be accepted. It is an inference drawn by the learned Civil Judge that due to amendment, the map placed on record has lost his value. It is laid down by the series of decisions of this Court that in a boundary dispute, measurement by an independent authority is necessary to resolve the dispute finally. Pursuant to this provision of law, the Taluka Inspector of Land Records (TILR) of the local area was directed to carry out measurements and it is in this map, the learned District Judge has given effect to. Even the approach of the learned Civil Judge that by amending the plaint, the map stood discarded, was also not correct. Therefore, the finding of fact recorded by the learned District Judge that the Appellant has encroached upon 5 sq. mtrs. portion of the suit land cannot be interfered with under Section 100 of the Code of Civil Procedure. No other argument was advanced. The Second Appeal is dismissed. The Civil Application stands disposed of accordingly.

(N.M. Jamdar, J.)