

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 360 OF 2012

Digambar Balaji Ghodke (Died)
Legal Heirs,

- 1a Prakash Digambar Ghodke,
age : 65 years, Occu.: Service,
R/o Jain Galli, Tq. Shevgaon,
Dist. Ahmednagar,
 - 1b Smt. Vaishali Anil Sakhare,
Age : 55 years, Occu.: Household,
R/o Sidhharth Nagar, Blok No.200,
Dist. Ahmednagar
 - 1c Smt. Kanchan Santosh Pandhare,
Age : 51 years, Occu.: Household,
R/o Near Deshpande Hospital,
At Post Barshi,
Dist. Solapur,
 - 1d Smt. Vimalbai Digambar Ghodke,
Age : 80 years, Occu.: Household,
R/o Jain Galli, Tq. Shevgaon,
Dist. Ahmednagar
 - 2 Ashok Digambar Ghodke,
Age : 58 years, Occu.: Business,
r/o Jain Galli, Tq. Shevgaon,
Dist. Ahmednagar
- APPELLANTS

VERSUS

- 1 Smt. Indirabai Vishnupant Urankar,
(Died)

- 2 Prabhakar Vishnupant Urankar,
Age : 65 years, Occu.: Nil,
 - 3 Balasaheb Prabhakar Urankar,
age :52 years, Occu.: Nil,
 - 4 Baliram Prabhakar Urankar,
Age: 44 years, Occu.: Nil,
 - 5 Sudam Prabhakar Urankar,
age: 42 years, Occu.: Nil,
All r/o Jain Galli,
Shevgaon, Dist. Ahmednagar
- RESPONDENTS

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Mr.S.S.Chapalgaonkar, Advocate for Appellants

Mr.S.V.Natu, Advocate for respondent nos.2 to 4

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CORAM : SANGITRAO S. PATIL, J.
DATE : JULY 10, 2017

ORAL ORDER :

Heard the learned Counsel for the appellants and the learned Counsel for the respondents.

2. The deceased appellant had instituted the suit for injunction simplicitor bearing R.C.S. No.37 of 2004 to protect his possession over the suit property bearing house No.132, City Survey

No.2186 open plot ad-measuring 545 square feet i.e. 50.7 square metres, situate in the local limits of Village Panchayat, Shevgaon. The respondents disputed the exact location of the suit property.

3. The learned Counsel for the appellants submits that the suit property was measured and demarcated by the T.I.L.R. and D.I.L.R. The reports of the T.I.L.R. and D.I.L.R. were produced before the trial Court. According to him, the learned trial Judge ought to have considered the area which, admittedly, was in actual possession of the appellant and should have granted the relief of injunction. According to him, appreciation of evidence made by the learned trial Judge in respect of this point is incorrect and that will be a substantial question of law.

4. On the other hand, the learned Counsel for the respondents submits that there is

concurrent findings of facts by the trial Court as well as by the appellate Court. The location of the suit property itself is not made clear. No substantial question of law is involved in this matter.

5. It is true that the suit property was measured and demarcated by the T.I.L.R. as well as by the D.I.L.R. However, it is observed in paragraph 13 of the judgment of the trial Court that the area and boundaries of the suit property are not clear from the evidence that was produced on record. In the absence of the evidence establishing the exact location of the suit property with specific boundaries, it was not possible for the trial Court to grant relief of injunction, as sought by the appellant. The appellate Court also has re-appreciated the evidence and found that the documents produced on record disclose different measurements of the suit property and as such, it was not possible to grant

the relief of injunction as sought. These concurrent findings of facts, which cannot be said to be perverse or without proper appreciation of evidence, cannot be called in question in the Second Appeal. No substantial question of law is involved.

6. Hence, the order:-

- (i) The Second Appeal is dismissed.
- (ii) No costs.

[SANGITRAO S. PATIL, J.]

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