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

SECOND APPEAL NO. 62 OF 2013

1. Vitthal S/o Hiranman Bansode,
age 65 years occupation agriculture,
2. Deelip S/o Vitthal Bansode,
age 40 years occupation agriculture,
3. Devidas S/o Vitthal Bansode,
age 37 years occupation agriculture,
4. Bharat S/o Vitthal Bansode,
age 34 years occupation agriculture

All R/o Malegaon Taluka Ahmedpur District Latur.

...APPELLANTS
(Original defendants)

VERSUS

Anirudh S/o Bhanudas Chevle
age 40 years occupation agriculture
R/o Malegaon (Kh) Taluka Ahmedpur District Latur.

...RESPONDENT
(Original plaintiff)

Shri Jayant R. Patil, Advocate for appellants

CORAM : N.W. SAMBRE, J.

DATE : 4th August, 2017

ORAL ORDER

The present appellants are the defendants in Regular

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Civil Suit No. 243 of 2002, in which the Trial Court, vide judgment and decree dated February 28, 2007, recorded finding that respondent/plaintiff is owner of land Gat No. 34 and stream flows in between the lands Gat No. 34 and 24, which are respectively owned by plaintiff and defendants. As such, the Trial Court proceeded to injunct present appellants/defendants from interfering with the possession of plaintiff over the land Gat No. 34, which was confirmed in an appeal by the Judgment and decree passed by the learned District Judge-1, Ahmedpur, on April 12, 2012.

2. While questioning the finding, Shri Patil, learned Counsel for the appellants would urge that vide Exh. 60 the Taluka Inspector of Land Records has measured the land pursuant to the order of the learned Trial Court on an application moved by the appellants/defendants. In the said map drtawm , it was found that the stream passes in between land Gat Nos. 24 and 34 of the appellants and respondent, respectively, and the land on the Northern side of the stream cannot be held to be that of the respondent/plaintiff. According to him, there are findings recorded as regards respondent/plaintiff not in possession of land on the Northern side of the stream, adjoining land of the appellants, and as such, the Trial Court and Appellate Court committed error of law in granting

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injunction. He would then urge that the stream has to be considered as a dividing line in between land Gat Nos. 34 and 24, when such stream changes its alignment, based on the flow of the water.

3. If the submissions of learned Counsel Shri Patil for appellants, are appreciated based on findings recorded by both the Courts below, it is worth to observe that the appellants have admitted ownership of the respondent/plaintiff over the land Gat No. 34. It is also inferred from the record that the stream passes through land Gat Nos. 34 and at times in Gat No. 24, depending upon flow of the water as alignment of the stream changes.

4. The Taluka Inspector of Land Records pursuant to the report at Exh. 60, in his deposition has brought on record that on the Northern side of the stream, some land of the respondent/plaintiff was located.

5. In the aforesaid backdrop, it is to be noted that once ownership of the plaintiff is not disputed over Gat No. 34, both the courts below have rightly held that the appellants/defendants are to be restrained from interfering with the land Gat No. 34. Whether the alignment of land Gat No. 34 is changed with flow of stream, is a

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separate issue, as the appellants are required to be confined themselves to the extent of injunction order operating, only to the extent of land Gat No. 34.

6. In view of above, in my opinion, no question of law is involved. The appeal against concurrent findings, as such, fails. Hence appeal is dismissed.

(N.W. SAMBRE, J.)

pjm