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

**SECOND APPEAL NO. 371 OF 2016
WITH
CIVIL APPLICATION NO.8222 OF 2016**

Navnath Dhondiba Sontakke,
Age: 41 years, Occ: Labour,
R/o.New Datta Mandir Road,
Manwat, Tq. Manwat, Dist. Parbhani. ..APPELLANT

VERSUS

Padmini Balaji Naik,
Age: Major, Occ: Household,
R/o. New Datta Mandir Road,
Manwat, Tq. Manwat,
Dist. Parbhani. ..RESPONDENT

Mr N.L. Chaudhari, Advocate for appellant;

CORAM : N.W. SAMBRE, J.

DATE : 6th JULY, 2017

ORAL ORDER :

Present appellant filed Regular Civil Suit No. 82 of 2008 praying injunction against the defendant from raising construction over the suit property being House No.2/1/177 and 2/1/177/1, which suit came to be decreed by the judgment and order dated 17th November, 2009 passed by the Civil

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Judge, Junior Division, Manwat, which was reversed by learned Adhoc District Judge-1, Parbhani in Regular Civil Appeal No.135 of 2010 by the judgment and order dated 29th September, 2015. As such, this second appeal.

2. Relying upon the judgment of the Apex Court in the matter of Santosh Hajari vs Purushottam Tiwari (deceased) by LRs. reported in (2001) 3 S.C.C. 179, learned Counsel for the appellant would urge that the appellate Court has failed to consider and reappraise the pleadings and evidence of respective parties for reversing judgment of the trial Court. He would then urge that reasonability of the prayer of the appellant in the suit could be ascertained from the fact that the appellant in the trial Court, so also in the appellate Court was able to establish his title over the suit property. According to him, the judgment of the appellate Court is not sustainable.

3. With the assistance, I have gone through the evidence of plaintiff, written statement filed by the respondent and further analyzed submissions

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made by learned Counsel for the appellant. It is required to be noted that though the appellant was able to prove the issue of title over the suit property, however, it is in anticipation that he moved the suit with prayer for order of injunction.

4. From the record, it could be ascertained that the defendant has come out with plea in his defence, particularly in paragraph-14 of the written statement that if permitted by the municipal corporation, the respondent shall carry out construction over the suit property.

5. Apart from above, it is to be noted that no specific cause of action is demonstrated so as to infer that the respondent has encroached upon the property of the appellant, particularly in absence of any measurement map or allegations to that effect.

6. As such, the appeal lacks merit, stands dismissed, particularly in the backdrop of the fact

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that the respondent has come out with plea that if permitted by municipal corporation, the respondent shall carry out construction in accordance with law.

7. Civil Application stands dismissed accordingly.

(N.W. SAMBRE, J.)

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