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

***SECOND APPEAL NO. 171 OF 2016
with
CIVIL APPLICATION NO. 306 OF 2016***

Niyaz Mohmed Shaikh Abbas. ... Appellant/Applicant.

V/s.

Akabarkhan Ibrahimkhan Mulla. ... Respondent.

Ms. Sneha Sanap for the Appellant/Applicant.

Coram : N.M. Jamdar, J.

Date : 27 March 2017.

Oral Order :-

Heard the learned Counsel for the Appellant. The Appellant is the Original Defendant. The Regular Civil Suit No. 74 of 2001 was filed by the Respondent - Plaintiff for seeking injunction against the Appellant as the Respondent – Plaintiff apprehended that the Appellant would put up a structure in respect of the suit property. The suit was dismissed by the learned Civil Judge, Junior Division, Nandgaon on 16 February 2010.

2. By the impugned judgment and order dated 2 November 2015 the learned District Judge, Malegaon has reversed the finding of the learned Civil Judge and has allowed the Appeal and decreed the suit and has directed the Appellant to remove the encroachment and also has granted permanent injunction.

3. The learned Counsel for the Appellant submitted that the structure was put up in the year 2001. It was submitted that this stand was taken in the counter-claim and in the written statement. The Appellate Court has considered this factual aspect and has found that the Appellant had failed to produce any such evidence. The open plot over which a slab/covering was sought to be put up, admittedly belonged to the Respondent – Plaintiff. Burden was therefore on the Appellant to prove that the Appellant had any right in respect of the same or had legitimately put up the construction. The Appellant failed to prove the same.

4. It was then contended that the suit was filed only for permanent injunction and there was no prayer for removal of the concrete slab which has been granted by the impugned judgment and order. The learned District Judge was aware of this position. However, he noted that a temporary injunction was granted by the learned Civil Judge. On 17 July 2002, the Taluka Inspector of Land Records (TILR) was appointed. He submitted his report. After

scrutiny of the evidence and the report on record, the learned District Judge found that the concrete slab was put up in violation of temporary injunction. The learned District Judge, following the law laid down by the Apex Court, held that when parties violate an order of injunction, the Court can use its inherent power to direct status-quo ante. Therefore, there is no illegality committed by the learned District Judge in directing the Appellant to remove the encroachment as regard grant of permanent injunction. The open plot admittedly belongs to the Respondent – Plaintiff and therefore, the Appellant has been correctly enjoined. No question of law arises, much less any substantial question of law. The Second Appeal is dismissed. The Civil Application does not survive and is disposed of.

(N.M. Jamdar, J.)