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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION******SECOND APPEAL NO.169 OF 2014***

Dattaraya Ragnath Bhosle ..Appellant.

V/s.

Madhukar Sandipan Jagtap & Anr. ..Respondents.

Mr.Sandeep Salunke for the Appellant.

Coram : N.M.Jamdar, J.

Date : 3 April 2017

ORAL ORDER

Heard the learned counsel for the Appellant. The Appellant has challenged the concurrent Judgments and Orders passed by the learned Civil Judge, Junior Division, Barshi in Regular Civil Suit No.235/1998 dated 14 August 1998 granting the counter-claim of Respondent No.1-Defendant and dismissing the Civil Appeal No.434/1998 filed by the Defendant on 14 October 2009 by the learned District Judge, Solapur.

2. The Appellant filed a suit for possession of the encroached land of 6 Are of Gat No.128 situated at village Raulgaon, Taluka Barshi and for permanent injunction against Respondent No.1-Defendant in respect of the outlet of water channel.

Respondent No.1-Defendant also filed a counter-claim and sought direction against the Appellant to close the new water outlet. The learned Civil Judge by Judgment and Order dated 14 August 1998 partly decreed the suit and directed Respondent No.1-Defendant to hand over possession of 6 Are of the encroached portion of the land to the Plaintiffs and also allowed the counter-claim of Respondent No.1-Defendant and directed the Appellant-Plaintiffs to close the new outlet / outlet No.1. This order was confirmed in the appeal by the learned District Judge.

3. The learned counsel for the Appellant submitted that the Respondent No.1-Defendant had constructed a new outlet, which was located at a different location. Both the Courts have framed an issue as to the duration of the existence of the two outlets. This adjudication was necessary in view of the rival contentions. It was the case of the Defendant that the Appellant-Plaintiff had opened a new outlet. It was the contention of the Appellant that the two outlets were in existence since long time. The parties led their evidence. A Court Commissioner was appointed. Both the Courts rendered a categorical finding that the outlet No.1 was newly constructed by the Appellant. Respondent No.1-Defendant had given no objection as regard the outlet No.2 being the old outlet. The findings regarding the existence of the outlet No.2 is since long time and the Outlet No.1 being newly constructed are purely a factual finding. Both the Courts, after considering the oral and

documentary evidence, have recorded this factual finding. It is not possible to re-appreciate the evidence to interfere with this concurrent finding of fact. Once this factual position was established, there was no error in granting the counter-claim of Respondent No.1. No question of law arises in the second appeal. The second appeal is accordingly dismissed.'

(N.M.Jamdar, J.)