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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.541 OF 2016

Sachin Sitaram Khedekar

..Appellant.

V/s.

Sunil Pandurang Kamble

..Respondent.

Mr.Pradeep Patil with Sachin Bagal for the Appellant.

Coram : N.M.Jamdar, J.

Date : 2 May 2017

ORAL ORDER

The Appellant has challenged the concurrent Judgments and Orders passed by the learned Civil Judge, Junior Division, Murud, District Raigad and the learned District Judge, Raigad, Alibag whereby the suit and the appeal of the Appellant were dismissed.

2. The Appellant instituted Regular Civil Suit No.19/2011 for injunction against the Respondent. According to the Appellant, the Respondent carried out certain unauthorised construction of

eaves which caused rain water to fall in the area of the Appellant as well as the Respondent erected a door on the northern side of the property. According to the Appellant, the Respondent caused nuisance to the Appellant and, therefore, by an order of injunction the Respondent needs to be restrained. The learned Civil Judge held that there was no such nuisance caused to the Appellant as the rain water was falling since last 60 to 70 years. The learned Civil Judge accordingly dismissed the suit by the Judgment and Order dated 25 April 2012. Civil Appeal No.210/2012 filed by the Appellant was also dismissed by the learned District Judge by the Judgment and Order dated 1 April 2016.

3. The learned counsel for the Appellant submitted that both the Courts have not taken into consideration the admission of the Respondent in the cross-examination that it is in the year 2011 that the Respondent had carried out construction of the door as well as the *eaves*. The learned counsel submitted that in view of this position, the conclusion that this position existed since last 60 to 70 years is clearly erroneous. The learned counsel also submitted that the opening of the door for the first time in the year 2011 was a nuisance to the Appellant.

4. As far as the opening of the door is concerned, the same is opened in the structure of the Respondent. From the perusal of the evidence on record, nothing seems to have been shown as to how

this seriously effects the enjoyment of the property of the Appellant. Hence inconvenience to the Appellant cannot justify a mandatory relief.

5. As far as the contention based on this admission in the cross-examination is concerned, this argument has not been made in the District Court. Even otherwise, this submission will not change the outcome of the proceedings. The grievance of the Appellant was of nuisance of rain water falling in his land. What the Respondent had accepted was construction of the *eaves* in the year 2011, however, from the admission of the Appellant himself it is clear that the alleged nuisance of rain water falling in his land was going on from last 60 to 70 years, in view of the sloping roof of the Respondent. Therefore, the construction of the *eaves* in the year 2011 did not bring any change in the situation. This finding of fact recorded by both the Courts, based on admission of the Appellant himself, cannot be termed as perverse. Consequently, no substantial question of law arises in the appeal. The Second Appeal is accordingly dismissed.

(N.M.Jamdar, J.)