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

***SECOND APPEAL NO. 905 OF 2015
with
CIVIL APPLICATION NO. 1977 OF 2015***

Mr. Laxman Govind Jadhav. ... Appellant/Applicant.

V/s.

Mr. Machindra Gunaji Echake. ... Respondent.

Mr. Vijay Gharat for the Appellant/Applicant.

Coram : N.M. Jamdar, J.

Date : 13 April 2017.

Oral Order :-

The Appellant has challenged the judgments and orders passed by the Civil Judge, Junior Division, Khalapur and the learned District Judge, Alibag – Raigad, whereby the suit filed by the Respondent – Plaintiff was decreed and the Appeal filed by the Appellant was dismissed.

2. The Suit was filed by the Respondent – Plaintiff for removal of encroachment put up by the Appellant on the eastern side of the suit property. Both the Courts have found that the Respondent – Plaintiff was the owner of the property and the Appellant has encroached upon the portion of the suit property. The learned Counsel for the Appellant submitted that there is a variance in the reports relied upon by the Respondent – Plaintiff so also the description of the suit property given in the plaint is not correct. He submitted that the Court Commissioner has not been examined. Irrespective of the map relied upon by the Respondent – Plaintiff, the Trial Court had appointed the Taluka Inspector of Land Records (TILR), Khalapur as a Court Commissioner. The Court Commissioner submitted his report. The Respondent – Plaintiff admitted the report. The Appellant did not make any comments whatsoever on the report. In view of this position, the learned Trial Judge proceeded to rely upon the report as the Appellant did not raise any specific complaint about the measurement before the surveyor.

3. In these circumstances, the view taken by both the Courts that the encroachment stands proved is a possible view based on the appreciation of the evidence, no question of law arises. The Second Appeal is accordingly dismissed.

(N.M. Jamdar, J.)