

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

**SECOND APPEAL NO.608 OF 2014
WITH
CIVIL APPLICATION NO.1453 OF 2014**

Smt. Sushila Shivajirao Nimbalkar Appellants
& Ors.

Vs.

Kamdhenu Sahakari Dudh Vyavasayik Respondents
Sanstha Maryadit Shendur & Ors.

Mr. Amit Borkar a/w Mr. Vikram Walawalkar for the Appellants and
Applicants.

Mr. Surel Shah a/w Mr. Swaroop Karade for the Respondents.

Coram : N.M. Jamdar, J.

Date : 3 May 2017

ORAL ORDER :

The Appellants have challenged the judgment and order passed by the learned District Court, Kolhapur dated 1 October 2014 allowing Regular Civil Appeal No. 114 of 2010 filed by the Respondent-who is the original defendant.

2 The Appellants, who are the original plaintiffs filed Regular Civil Suit No.20 of 2008 in the Court of Civil Judge, Junior Division,

Kagal for declaration and injunction. According to the Appellants, they are the owners of City Survey No.362, situated at village Shendur, Taluka Kagal, District Kolhapur. It was contended that the Respondents purchased a land adjoining to the property of the Appellants and were proceeding to construct upon the same and in the process, the Respondents were trying to disturb the possession of the Appellants and obstructing the easementary rights of the Appellants of light and air to their house. The learned Civil Judge decreed the suit by the judgment and order dated 17 March 2010 and restrained the Respondents from encroaching and making construction on the suit land and restrained them from constructing in the manner that would affect light and air of the Appellants. In appeal, the learned District Judge held that the Appellants themselves have constructed upto the boundary and therefore they are not entitled to make a grievance in respect of the construction of the Respondents without leaving sufficient margin.

3 Learned counsel for the Appellants submitted that it is an admitted position that the suit property has been purchased by the Appellants by sale-deed on 11 June 1986. He submitted that as regards injunction to protect the property of the Appellants, there is no reason why the Appellants should have been deprived of the same by the learned District Judge. This submission merits consideration. As far as

the property, which is purchased by the Appellants by sale-deed, the Appellants will have title to the same and therefore, the Respondents cannot interference with the property of the Appellants, which is lawfully purchased by the Appellants. Learned counsel for the Respondents also states that as far as the property purchased by the Appellants by way of sale-deed dated 11 June 1986, the concerned Respondents do not have any ownership claim regarding the same and thus has no intention to disturb the possession of the Appellant. This statement is accepted. In view of this position, it is not necessary to dwell further on this aspect, this apprehension of the Appellants stand redressed.

4 It was then contended by the Appellants that the Respondents must leave necessary space, as mandated from the boundary before starting the construction. It was submitted that failure of the Respondents to do so will affect easementary rights of the Appellants to light and air.

5 The Respondents are proceedings to construct on the land which admittedly is their own property. They can be restrained so by the Appellants is if the Appellants have any easementary rights of light and air. The learned District Judge has recorded a factual finding based on the admission of the witness of the Appellants that the Appellants themselves have constructed beyond what was stated in the sale-deed

upto the boundary. Once the Appellants had constructed upto the boundary, then the Appellants cannot make a grievance that the Respondents construction will affect the right of light and air. In short, the situation whereby light and air of the Appellants may be affected is created by the Appellants themselves by not leaving sufficient space from the boundary.

6 In the circumstance, there is no error in the view taken by the learned District Judge that the Appellants are not entitled to restrain the Respondents from constructions on the basis of alleged violation of easementary rights of light and air. No question of law arises. The Second Appeal is accordingly dismissed. The Civil Application stands disposed of.

(N.M. Jamdar, J.)