

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

**SECOND APPEAL NO.720 OF 2013
ALONGWITH
CIVIL APPLICATION NO.817 OF 2014
IN
SECOND APPEAL NO.720 OF 2013**

Bapu Natha Ingawale

...Appellant

Versus

Village Panchayat Kharsundi & Ors.

...Respondents

Mr. R. A. Naik i/b Umesh Mankapure for the Appellant.

None for the Respondents.

CORAM : A. A. SAYED, J.

DATE : 16 NOVEMBER, 2017

P. C.:

1. The Second Appeal under section 100 of the Code of Civil Procedure, 1908 is filed by the Appellant/Orig. Plaintiff challenging the judgment and order dated 7 September 2013 of the District Court in Appeal confirming the judgment and order dated 29 March 2008 of the Civil Judge, Junior Division,

dismissing the suit for possession and perpetual injunction. Both the Trial Court as well as Appellate Court have rendered concurrent finding on facts.

2. The Appellant/Orig. Plaintiff had filed the suit on the basis that the suit property bearing City Survey No.1010 occupied by him is his ancestral property. He claimed that he has constructed a house in the suit property and he is in possession of the same for last 50 years. He sought possession of the encroached portion of land by Defendant Nos.2 and 3 in City Survey No.1010 admeasuring 260 sq.mtr. and also sought perpetual injunction. It was the case of the Appellant/Orig. Plaintiff that Defendant No.1-Grampanchayat with an intent to oust him, granted permission to the Defendant Nos.2 and 3 to construct house in the suit property and they have accordingly constructed their house in the suit property and have thus encroached upon the suit property.

3. The Defendant No.1-Grampanchayat filed a written

statement stating that the suit property is owned by the Government of Maharashtra and the Government of Maharashtra was not made a party to the suit and the Plaintiff was not paying any tax to the Defendant No.1-Grampanchayat. The Defendant Nos.2 and 3 did not appear before the Trial Court and the Suit proceeded ex-parte against them.

4. The Trial Court after appreciating the evidence on record concluded that it is the Appellant/Orig. Plaintiff who has made encroachment in the suit property belonging to the Government of Maharashtra and he was not paying any tax to the Defendant No.1-Grampanchayat. The entry in column 13 in the inquiry register at Exhibit '8' and the endorsement showed that the Plaintiff had made encroachment in the suit premises. The Trial Court found that the Plaintiff did not produce any document of title to the suit property and he had no title over the same. The Trial Court noted that when the Plaintiff himself is a trespasser, he was not entitled to recover possession from Defendant Nos.2 and 3. The Trial Court accordingly dismissed the suit.

5. The Lower Appellate Court after re-appreciating the evidence, concurred with the findings of the Trial Court.

6. Thus both the courts below have arrived at finding of fact that the Plaintiff was an encroacher of government land and the suit property was not the ancestral property of the Plaintiff and he had no right in the suit property.

7. No question of law much less any substantial question of law arises in the Second Appeal. Hence, the Second Appeal is dismissed with costs.

8. The Civil Application does not survive and to stand disposed of.

[A. A. SAYED, J.]