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

SECOND APPEAL NO.371 OF 2015

Raghunath Jyoti Vagare

...Appellant
(Plaintiff)

Versus

1. Tukaram Dagdu Shriram
2. Bhamabai Shamrao Shriram
3. Mahadeo Dattu Mote

...Respondents
(Defendants)

Mr.A.A.Joshi, for the Appellant.

Mr.Shashank Mangale i/b Mr.Hamid D.Mulla, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 9th OCTOBER, 2017

P.C. :

1. Heard learned Counsel for the parties.
2. By this second appeal preferred under Section 100 of Civil Procedure Code, the appellant has impugned the Judgment and Order

dated 29th October, 2014, passed by the learned Ad hoc District Judge-1, Pandharpur, by which Regular Civil Appeal No.69 of 2011, came to be dismissed and as such, consequently the Judgment and Decree dated 25th March, 2011, passed by the learned 9th Joint Civil Judge Junior Division, Pandharpur, in Regular Civil Suit No.97 of 2009, came to be confirmed.

3. While dismissing the suit as well the appeal, both the lower Courts have held that the appellant is the owner of Gat No.216, admeasuring 1 H 20 R and that the appellant is in possession of the said land. Considering the dispute, whether there was a road in existence in the said portion admeasuring 1 H 20 R purchased by the Appellant- Raghunath Jyoti Vagare (Plaintiff) vide Sale Deed dated 28th April, 2006 registered on 2nd May, 2006, from Tukaram Dagdu Shriram (Respondent No.1 and Original Defendant No.1) and one Dagdu, this Court (Coram:S.J.Kathawalla,J.) vide order dated 14th July, 2017 appointed the T.I.L.R. Pandharpur, as Court Commissioner to visit the said area, admeasuring 1 H 20 R in Gat No.216, being the suit land and to report whether there was a pathway in existence in the said portion. Pursuant to the said order dated 14th July, 2017, the Court Commissioner submitted his

report. From the report of the Court Commissioner, it appears that there is a pathway, which is in existence and which passes through the said portion admeasuring 1 H 20 R in Gat No.216, being the suit land.

4. Perused the papers. According to the appellant, he had purchased an area admeasuring 1 H 20 R out of land bearing Gat No.216, situated at village Tanali, Taluka Pandharpur, District Solapur (suit land) from Tukaram Dagdu Shriram (Respondent No.1) and one Dagdu vide registered Sale Deed dated 2nd May, 2006. Pursuant thereto, the appellant's name was mutated in the revenue records. According to the plaintiff, there was no road in existence between the suit land and the land of defendant no.3-Mahadeo, (3 R out of land bearing Gat No.216), which was located towards the southern side of the suit land. According to the plaintiff, there was no road in existence, whereas, according to the respondents (original defendants) there was a pathway which passed from the said Gat No.216, through the land of the plaintiff i.e. through 1 H 20 R. According to the respondents, the plaintiff had deliberately suppressed the existence of Dewasthan in the land bearing Gat No.216. According to the respondents, infact there is a reference to the pathway even in the Sale

Deed dated 2nd May, 2006, executed between the appellant (original plaintiff) and defendant no.1 and Dagdu. After evidence was led, the trial Court dismissed the suit of the appellant (original plaintiff) with costs. The said order was confirmed in Appeal by the Appellate Court. Both the lower Courts observed that the appellant was the owner of Gat No.216, in particular area admeasuring 1 H 20 R and that he was in possession of the suit land. Both the lower Courts also observed that there was a pathway in the suit land. In view of the controversy in the present appeal, this Court (Coram:S.J.Kathawalla,J.) appointed the T.I.L.R. Pandharpur, as a Court Commissioner to visit the said area and to ascertain whether there was a pathway in existence in the said portion admeasuring 1 H 20 R purchased by the appellant (original plaintiff) vide Sale Deed dated 28th April, 2006 registered on 2nd May, 2006, from the Respondent No.1 and Dagdu. The Court Commissioner submitted his report. The report shows the existence of a pathway in the said portion admeasuring 1 H 20 R purchased by the appellant (original plaintiff) vide Sale Deed dated 28th April, 2006, from the Respondent No.1 and Dagdu. The recitals in the sale deed also corroborate the same.

5. Having heard the Learned Counsel for the parties and having perused the impugned Judgment and Orders passed by the Courts below, in the light of the findings recorded therein, no substantial question of law arises for consideration of this Court. The Second Appeal is accordingly dismissed.

(REVATI MOHITE DERE, J.)