

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.334/2016

Parashram Tukaram Bhange ..vs.. Smt. Sumatibai w/o Ankushrao Dongre

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S. Y. Deopujari, Advocate for appellant.

Mr. A. A. Sambaray, Advocate for respondent.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 10, 2017

Heard Mr. Deopujari, learned counsel for the appellant and Mr. Sambaray, learned counsel for the respondent.

Appellant-Parashram is the original plaintiff. He has filed a suit for permanent injunction. The said suit was dismissed by the learned Judge of the trial Court. The appeal carried against the said decree was also dismissed by the learned District Judge.

According to the plaintiff, the defendant was trying to make encroachment on the land belonging to the plaintiff.

The Court Commissioner's report Exh.-162 and the plaint map shows that no encroachment is made by the defendant on the strip of land as claimed by the plaintiff near the portion "LM" in the plaint map. According to the learned counsel, there is variance in the pleadings of the defendants. He cannot claim easement as well as ownership

over the property.

The learned counsel for the appellant relies on a reported case of the Andhra Pradesh High Court in *Sri Venkateswaraswamivaru Devasthanam Vs. Velidandla Kanakalakshmi and anr.* reported in *AIR 1976 AP 250.* However, the said case is very well distinguishable.

Here the case of the plaintiff is not for claiming possession of any area encroached by the defendants. The suit is for permanent injunction that the defendant should not make encroachment over the suit property. Both the Courts below, on appreciation of the evidence, found that there was no attempt on the part of the defendants to make encroachment as suggested in the plaint map. No substantial question of law is involved in the present appeal. Hence, the present appeal is dismissed. No order as to costs.

JUDGE