

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

SECOND APPEAL NO. 153 OF 2016

Smt. Kantabai Mohan Pingale

... Appellant

VERSUS

baburao Fakira Bhalerao

... Respondent

.....

Mr Pramod P. Dhorde, Advocate for the appellant

Mr G. V. Wani, Advocate for respondents No. 1 & 2

.....

WITH

CIVIL APPLICATION NO. 12171 OF 2016

IN

SECOND APPEAL NO. 153 OF 2016

CORAM : A. M. DHAVALA, J.

DATE : 21ST NOVEMBER, 2018.

PER COURT :-

1. Heard Mr Pramod Dhorde, learned counsel for the appellant.
2. The plaintiff is owner of Block No. 4. The defendant No. 1's property Block No.1 is situated on southern side of plaintiff's property. In between the two properties there is a lane of 5 ft. width. The dispute relates to the ownership and possession of the said lane. The plaintiff-appellant herein filed suit claiming exclusive ownership of the said lane.

Admittedly, both the properties were belonging to one common owner namely Harish Construction and he has executed sale deeds in favour of plaintiff and defendant No. 1. The sale deed of defendant No. 1 (Exh. 108) initially showed that the land was belonging to the plaintiff/holder of block no. 4 but the registered correction deed is executed by the builder in his favour showing that the said lane is a common lane of joint ownership and joint possession of the plaintiff and defendant No.1. The plaintiff did not produce his sale deed. In the light of these facts, the trial Court as well as the first Appellate Court rejected the case of the plaintiff that he was exclusive owner and in exclusive enjoyment of the suit lane. The documents produced by defendant No. 1 disclose that the lane is of common ownership & in common possession and common enjoyment and both the parties have no right to obstruct each other. The learned advocate for respondent fairly admits this position and submits that the same stand was taken in written statement. The plaintiff/appellant tried to produce the sale deed for the first time in this second appeal with no plausible reason given why it was not produced in the trial Court or even in the first appellate Court. In the situation, when both the courts have drawn adverse inference against the plaintiff for non-production of sale deed, the plaintiff cannot be permitted to reopen the trial and bring the parties to the initial stage by permitting

the plaintiff to file the sale deed at this stage. Considering the concurrent finding of both the courts that plaintiff is not the exclusive owner, no interference is called for in the concurrent findings. Hence, the appeal is dismissed in limine.

3. In view of dismissal of appeal, nothing survives for consideration in the connected Civil Application No. 12171 of 2016 and same stands disposed of.

[A. M. DHAVALE]
JUDGE

Punde