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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.708 OF 2015
WITH
CIVIL APPLICATION NO.1524 OF 2015

Krishna Doulu Navale Appellant
V/s.
The Government of Maharashtra
and anr Respondents

Mr. Amit B. Borkar, for the appellant.

Mr. Y. Y. Dabke, AGP for the Respondent State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 22nd OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the appellant and learned AGP for the State.

2] This Second Appeal takes an exception of the judgment and order of Ad-hoc District Judge-3, Kolhapur dated 24.3.2015, thereby dismissing the Regular Civil Appeal No.41 of 2009, which was preferred against the judgment and order dated 12.1.2009, passed in Regular Civil Civil Suit No.1258 of 2003 by Joint Civil Judge Senior Division, Kolhapur.

3] The said suit was filed by the appellant herein restraining

respondent from changing the location of the road passing through gat No.279 and also for injunction restraining respondent from getting any public road on Gat No.273 without following due process of law.

4] The trial Court has dismissed the suit on the count that the appellant has failed to prove that the road was passing through his land bearing Gat No.279. The appellant has in the suit carried out necessary amendment seeking relief in respect of Gat No.273. The appellate Court also found that there was clear admission given by the appellant in his cross examination that the part of Gat No.279 was acquired by the Government for road. However, he was unable to state as to which portion of gat No.279 was available for road by way of acquisition and what is the alleged encroachment, by reason of excessive user of portion of said land beyond the acquired portion. He further admitted that, whatever the road portion passing from Gat No.279, still continues at the time of filing of the suit. The appellate Court also found that as regards Gat No.273 though the measurement was required to be carried out, appellant has not taken any steps, even for the appointment of T.I.L.R. as Court Commissioner to show that the road is passing through the land. Though the appellant has filed application for appointment of T.I.L.R. on 7.9.2009, even at the time of argument no such application was pressed for hearing till 17.2.2015

5] In view thereof, the Appellate Court has, in the absence of

any evidence proving on record, the encroachment of road in gat No.273, was pleased to dismiss the Appeal.

6] In the Second Appeal, therefore, no substantial question of law is raised as such. Hence, the Appeal stands dismissed.

7] In view of dismissal of Appeal itself, pending Civil Application therein no more survives and the same is disposed off accordingly.

[DR. SHALINI PHANSALKAR-JOSHI, J.]