

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

**SECOND APPEAL NO. 487 OF 2016
WITH
CIVIL APPLICATION NO. 272 OF 2016**

Ashok Annasaheb Chawan & Ors.	...	Appellants
V/s.		
Balu Babu Pawar	...	Respondent

- Mr.Chetan G. Patil for the Appellants.
- Mr.Mandar Limaye for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 4th JUNE, 2018.

P.C. :

1] Heard learned counsel for the Appellants and learned counsel for the Respondent.

2] The Court of Civil Judge, Junior Division, Miraj has dismissed the suit filed by the Respondent for getting possession of the encroached portion of the land. The said judgment and decree dated 28/11/2007 was set-aside by the Court of Adhoc District Judge-2, Sangli, vide its judgment and order dated 04/10/2014 in Regular Civil Appeal No.26 of 2008.

3] Perusal of the judgment and order of the trial Court shows that the trial Court has not at all considered the case put up by the Respondent that he is the owner of the land bearing Survey No.155/2A and he has got the possession of the encroached portion of the land from the society, as a result of the B.N.D. proceeding bearing Application No.3 of 1988 before the Sub-Divisional Officer, Miraj, under the provisions of Section 138 of the Maharashtra Land Revenue Code, 1966. The trial Court has also not considered the evidence of the witness examined by the Appellants herein, namely, the representative of the society, who has categorically stated that the plot sold out to the Appellant was from Survey No.153 and 154; whereas the very case of the Respondent is that he is the owner of the Survey No.155/2A. Thus, both the lands are totally different. The land on which the Appellant is claiming ownership, having purchased the same from the society is from the portion of survey No.153 and 154 as deposed by the witness examined by the Appellant himself and who is from the society. However, it appears that, the Appellant has carried out construction over the land bearing Survey No.155/2 which is clearly owned by the Respondent on which the society has made encroachment and the said encroachment was removed as per the various orders passed by the Sub-Divisional Officer, Miraj, under the provisions of Section 138 of the Maharashtra Land Revenue Code.

4] In view thereof, no fault can be found in the impugned judgment and order of the Appellant Court reversing the judgment and order of the trial Court. Hence, no case is made out for admission of the appeal, as no substantial question of law is involved.

5] Therefore, the Second Appeal stands dismissed.

6] In view of dismissal of the Second Appeal, the Civil Application No.272 of 2016 does not survive and therefore, it also stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]