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

***SECOND APPEAL NO. 408 OF 2014
with
CIVIL APPLICATION NO. 9 OF 2012***

Rajendra Vitthal Pawar. ...Appellant/Applicant.

V/s.

Arif Mehboob Sayyad and Ors. ... Respondents.

Mr. Niranjan P. Shimpi for the Appellant/Applicant.

Mr. Abdul Karim Naziruddin Mulla for Respondents 1,5 to 9.

CORAM : N.M. Jamdar, J.

DATE : 8 January, 2018.

Oral Order :-

By this Second Appeal, the Original Defendant has challenged the judgment and order passed by the learned District Judge, Baramati dated 4 March 2009, setting aside the judgment and decree passed by the learned Civil Judge, Daund dated 17 August 2004. By the impugned order the learned District Judge decreed the suit filed by the Respondent – Plaintiff for perpetual injunction and

restrained the Appellant from interfering with the possession of the Respondent – Original Plaintiff.

2. Regular Civil Suit No. 75 of 1998 was filed by the Respondent – Plaintiff in the Court of Civil Judge, Junior Division, Daund seeking relief of perpetual injunction against the Appellant – Defendant. The learned Civil Judge dismissed the suit by judgment and order dated 17 August 2004 holding that the Respondent – Plaintiff failed to prove his case. A Regular Civil Appeal No. 122 of 2004 was filed by the Respondent – Plaintiff in the District Court, Baramati. The learned District Judge, after considering the sale deed executed in favour of the Defendant and after referring to the report of the Court Commissioner, allowed the Appeal and granted the relief of injunction.

3. Heard learned Counsel for the parties.

4. There is no dispute between the parties that the portion of 55 ½ Ares from Gat No. 501/1 is owned by the Respondent – Plaintiff and that 5 Ares is owned by the Appellant. The dispute sought to be raised by the Appellant is regarding the location of the respective properties. According to the learned Counsel for the Appellant, since the Respondent – Plaintiff was seeking an order of injunction, the burden was upon the Respondent – Plaintiff to

demonstrate which areas were in possession of the respective parties. The learned Counsel for the Appellant, relying on the decisions of this Court in the case of *Chandramani Marotrao Pantavne v/s. Shashikala Brijlal Bisen*¹ and in the case of *Lalitprabha Krishnaji Ajgaokar and Ors. v/s. Yunus Khan and Ors.*², contended that the case such as the present one, the Court should have appointed a Surveyor to ascertain the exact boundaries. The learned Counsel submitted that in the present case instead an Advocate was appointed as a Commissioner. He further contended that the reliance on the sale deed executed in favour of the Appellant is misplaced as there is no mention of any road. The learned Counsel for the Respondents supported the impugned judgment and order relying on the sale deed in favour of the Appellant – Original Defendant.

5. The present case where the Plaintiff has come to the Court with no document at all in respect of location to the properties. A sale deed was executed in favour of the Appellant by the Respondent – Plaintiff on 15 October 1987. The sale deed contains the specific recital that out of Gat No. 501 a part of the land is being sold to the Appellant. The description of the Gat number is given. Satara Shirur Road is shown on the East Side. On the South side Solapur Pune Road is mentioned. On the West side Gat No.

¹ 2016 (5) Bom. C.R. 537

² 2017 (1) Bom. C.R. 179

507 is mentioned and on the North Gat No. 502. Out of this land, what is sold to the Appellant is from the East – North corner, 5 Ares. The description of the land thus sold and its location is specified in the title deed of the Appellant. Based on this deed executed between the parties, when the suit was filed, the Respondent annexed a map to the plaint. The copy of the plaint with the map is placed shown to the Court. Location on the property is shown as in the east north corner. The location in the sale deed and the map is annexed with the plaint, tallies. Therefore, the Respondent – Plaintiff had discharged the burden of proving the location of the properties. If the Appellant wanted to dispute the said location which, tallied with his own title deed, it is the Appellant who should have sought a survey. Further, when an Advocate was appointed as a Commissioner, the Appellant did not raise any objection that he is not competent to carry out the commission. After the report has been held against the Appellant that a grievance has been made. In the decision which have been cited by the learned Counsel for the Appellant, such factual position did not exist. The learned Counsel for the Respondent submitted that even keeping aside the report of the Court Commissioner, on the basis of the sale deed itself, the order passed by the learned District Judge can be sustained. This submission is correct.

6. If the learned District Judge has based his conclusion on

the sale deed in favour of the Appellant itself, it cannot be said that it is an illegal or perverse approach. Each piece of evidence on record has been analyzed and legal reference therefrom has been drawn. It is not possible to re-appreciate the evidence under Section 100 of the Code of Civil Procedure. No substantial question of law arises. The Second Appeal is dismissed. Civil Application stands disposed of.

(N.M. Jamdar, J.)