

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

SECOND APPEAL NO. 830 OF 2017

Abdul Varis A. Ajij Shaikh & Anr.

....Appellants

V/s.

Sagira Haji Nazir Shaikh & Ors.

....Respondents

Mr. S.P. Raje Pandhare for the appellants.

Mr. Aditya Bhagat I/b. Mr. M.V. Thorat for R.Nos.1 to 6.

Mr. Anand S. Kulkarni for R.No.7.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 30TH NOVEMBER, 2018.

P.C.:

. The appellants herein who are the plaintiffs in the suit have challenged the judgment and decree dated 29/04/2016 whereby the learned District Judge-2, Solapur has dismissed the Civil Appeal No.21/2014 and thereby confirmed the judgment and decree passed by the Civil Judge, Junior Division, Solapur in Regular Civil Suit No.1055/2006. The appellants and the respondents shall be hereinafter referred to as 'the plaintiffs' and 'the defendants'.

2. The plaintiffs claim to be the owners of municipal house no.5 with open space bearing city survey no.8285/4B situated at Railway

Lines, Solapur more particularly described in para 1 of the plaint. The defendants are the owners of house no.6 surveyed under city survey no.8285/3 and 8304/D more particularly described in para 2 of the plaint. The defendants property is situated towards the western side of the plaintiff's property. The plaintiffs claim that the defendants broke open the wall and installed a gate and further constructed a structure admeasuring 8 feet x 10 feet which was on the boundary of city survey no.8304/D. The plaintiffs, therefore, filed a suit seeking declaration that the defendants have no right to the said property and for removal of the said encroachment. The defendants denied having encroached into the plaintiffs property.

3. Considering the rival claims of the respective parties, the learned Trial Judge framed the issues. Both the parties adduced the evidence and upon considering the evidence on record, the learned Trial Judge dismissed the suit mainly on the ground that the plaintiffs have failed to prove that the defendants had encroached over the property under City Survey No.8285/4B. The plaintiffs challenged the judgment and decree in Civil Appeal No.21/2014. While dismissing the appeal, the learned District Judge-2, Solapur has also observed that the plaintiffs had failed to prove that the defendants have encroached into the

property under City Survey No.8285/4B. Aggrieved by this judgment, the appellants have filed the present appeal.

4. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

5. Mr. S.P. Raje Pandhare, learned counsel for the appellants contends that the Courts below have erred in holding that the appellants are not the owners of the suit property i.e. property under City Survey No.8285/4B.

6. It is to be noted that the defendants have not disputed the fact that the appellants are the owners of the property under City Survey No.8285/4B. The First Appellate Court has also not recorded a finding that the plaintiffs herein are not the owners of the suit property. The appellants had claimed to be the exclusive owners of the suit property and in view of the statement made by the plaintiff in his cross examination, the District Judge, Solapur has observed that apart from the plaintiffs, there are other co-owners and that the plaintiffs are not the exclusive owners of the property.

7. Be that as it may, the dispute is not in respect of entire City Survey No.8285/4B but is only in respect of portion which is alleged to have been encroached upon by the defendants by constructing a structure. Both the Courts, upon appreciating the entire evidence have recorded a finding that the plaintiffs had not identified the portion which is alleged to have been encroached and further that the plaintiffs had not adduced any oral or documentary evidence to prove such encroachment. These findings of facts recorded by the Courts below, are based on evidence on record and are neither perverse nor illegal. The Appeal does not involve a substantial question of law. The Appeal has no merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)