

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.332 OF 2016

Nurjahan w/o Shaikh Gawas and ors.

-vs-

Kisanlal Ujawane

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. M. Puranik, Advocate for appellants.

Shri M. K. Kulkarni, Advocate for respondent Nos.1-a &
1-b.

CORAM : A.S.CHANDURKAR, J.

DATE : January 09, 2018

The appellants who are the original defendants have filed this appeal challenging the decree for possession passed by the trial Court in favour of respondent No.1 which decree has been confirmed by the appellate Court.

2. It is the case of respondent No.1 that he is the owner of suit property which was alleged to be encroached by the appellants herein. Initially the plaintiff had filed a civil suit seeking possession of the suit property. That suit was decreed and the appeal filed by the defendants came to be dismissed. The plaintiff received possession of the entire suit property. Subsequently the defendants again encroached on the Western portion of the said plot. Hence the present suit came to be filed.

3. The trial Court after taking into consideration the earlier adjudication held that the findings recorded therein operated as *res judicata*. The order regularising the occupation of the plaintiff was relied upon and the suit came to be decreed. The appellate Court confirmed the said decree.

4. Shri S. M. Puranik, learned counsel for the appellants submitted that the findings recorded in the earlier suit could not have been taken into consideration in these proceedings as the subject matter of earlier suit was a larger piece of land which was in fact occupied by the defendants as tenants. According to the plaintiff the suit property in the present proceedings was only part of the Western portion of the earlier property. The application moved by the defendants for having the property measured was also rejected.

5. Perused the impugned judgment. The record indicates that the earlier suit filed by the plaintiff was for seeking eviction of the defendants which came to be decreed. Suit property therein was described by giving boundaries. It has been found that after the plaintiff came back in possession the defendants encroached on the Western portion of the very same property. This finding of fact has been recorded by both the Courts. Both the Courts have therefore taken into consideration the earlier adjudication and found that the defendants have no right to continue in possession. As regards

measurement of the suit property, once it was found that the defendants did not have any legal right to continue in possession and the plaintiff's right of occupation was regularized, that aspect did not have much relevance. Considering the concurrent findings of fact recorded by both the Courts, I do not find that any substantial question of law arises for consideration in the Second Appeal.

The Second Appeal is therefore dismissed. No costs.

JUDGE