

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

**SECOND APPEAL NO.16 OF 2017
WITH
CIVIL APPLICATION NO.8 OF 2016**

1 Shri Ashok Laxman Jadhav
Age about 59 years,
Occupation: Retired,

2 Sou. Laxmi Ashok Jadhav,
Age about 45 years,
Occupation: Household,

3 Shri Vasant Laxman Jadhav,
Age about 52 years,
Occupation: Service,
All R/o. Menavali, Tal: Wai,
District: Satara

.. Appellants

Vs

Smt. Droupadabai Bhiku Jadhav
Age about 75 years,
Occupation: Agriculturist,
R/o. Menavali, Tal: Wai,
District: Satara

... Respondents

...

Mr. Dilip Bodake for the Appellants/Applicants.
Mr. Prabhanjan B. Gujar for the Respondents.

**CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 5 FEBRUARY, 2019
PRONOUNCED ON: 3 MAY, 2019**

ORDER:

Heard.

2 It is against the dismissal of the cross-objections in Regular Civil Appeal No.232 of 2010, respondents therein have preferred this Second Appeal.

3 I shall refer the parties as per their original nomenclature in the suit.

4 The suit property is a lane between the house of the plaintiff and the defendants, bearing Gram Panchayat Property Nos.29 and 33 respectively. Plaintiff alleged that defendants have encroached over the suit lane by erecting cement pole and thereby closed plaintiff's approach to the suit lane. He made complaints to Block Development Officer. However, since no action was taken, he instituted suit for seeking prohibitory and mandatory injunction.

5 It is not in dispute that plaintiff's husband sold part of the Gram Panchayat property No.29 (Old No.19) to the defendant by registered sale deed dated 18th December, 1953, wherein the suit

lane is described and shown, towards the Eastern side of the defendants' Gram Panchayat Property No.33. The learned Trial Judge appointed Court Commissioner and upon appreciating the oral as well as documentary evidence concluded that there was an open lane running South-North direction between the house properties of the plaintiff and defendants. The learned Trial Judge, however, found Court Commissioner did not mention particulars of the actual encroachment on the suit lane. He, therefore, drew preliminary decree and directed the Court Commissioner to submit his measurement report along with the map after taking into consideration the area and the boundaries mentioned in the sale deed dated 18th December, 1953 by showing exact, precise and concise area under the encroachment and would form part of the decree. The learned Trial Judge having found that the suit lane was kept open between the house of the plaintiff and the defendants, restrained the defendants from obstructing plaintiff's possession in the Gram Panchayat Property No.29.

6 That since the Trial Court refused the decree of mandatory injunction, plaintiff filed Regular Civil Appeal, in which defendants had filed cross-objections. Defendants would claim and assert that that they became owners of the disputed lane by adverse possession. In other words, defendants have denied existence of the suit lane between their house and the house of the plaintiff. In the cross-objections, they have challenged the findings rendered by the Trial Court, particularly, that relates to existence of the lane.

7 The learned Appellate Court dismissed the appeal and the cross-objections, by the judgment and decree dated 20th February, 2013. Against which defendants have preferred this Second Appeal.

8 Indisputedly, in the sale deed dated 18th December, 1953, the suit lane is described and shown on the Eastern side of the defendants' house and obviously on the Western side of the plaintiff's house. That even otherwise, Courts below found that the other evidence has also established the fact that the suit lane exist between the two houses. The appellants/defendants denied

existence of the suit lane and would claim its possession as owners by adverse possession. Thus, findings rendered by both Courts, founded on sale-deed of 1953 and other evidence cannot be faulted with.

9 It appears the Court Commissioner did not submit particulars of the encroachment and thus, in the given set of facts, the Trial Court directed Court Commissioner to visit the suit lane, measure the same and then submit a map and report of encroachment made on the suit lane to the Trial Court which would form part of the decree.

10 Thus, taking into consideration facts of the case and the evidence on record, finding rendered by the Courts below is consistent with the evidence on record. Essentially what is challenged in the Second Appeal is finding of fact rendered by the Courts below which does not involve any substantial question of law. Second Appeal is, therefore, dismissed. Civil Application is, accordingly, disposed of.

(SANDEEP K. SHINDE, J.)

