

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 167 OF 2017

ALONGWITH
CIVIL APPLICATION NO. 734 OF 2018
(FOR STAY)

Mr. Kamlakar Bhagwan Penkar
and Ors.

.....Appellants

V/s.

Mr. Dattatray Balaram Penkar

....Respondent

* * * *

Mr. Rohit D. Joshi, Advocate for the appellants.

Mr. Kailas S. Dewal, Advocate for the respondent.

CORAM : SANDEEP K. SHINDE, J.

Wednesday, 13th March, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. Against the concurrent findings of facts, the plaintiff in Regular Civil Suit No. 149 of 1997 has preferred this Appeal against the decree passed in Regular Civil

Appeal No. 142 of 2011.

3. The suit was filed for removal of encroachment made by the respondent-defendant to the extent of 189.6 sq.foot on the property owned by the plaintiff and for its possession. Admittedly, the land is in gaathan of which the revenue survey has not been done. In the premise, the evidence of P.W. 2-the Surveyor appointed by the Court to ascertain the encroachment has not been considered by the Appellate Court and rightly so. That even otherwise, the evidence of the Surveyor shows inabsence of basic revenue record, he had measured the land as shown by the plaintiff. In view of this fact, the plaintiff ought to have led other evidence, to establish the factum of encroachment made, by the defendant on the suit lands.

4. The learned Counsel for the appellants would submit that, the plaintiffs have proved their title to the suit house no.65 and the area around it by producing on record, the registered family deed dated 7th March, 1961 and the assessment extract at Exhibit-27. Be that as it may, the suit was simplicitor for removal of encroachment and not for

declaration of title.

5. Both the Courts have predominantly recorded the findings of facts that the plaintiff could not prove the alleged encroachment made by the defendant on his land, which in my view, is consistent with the evidence on record. In view of this, no interference is called for. The Appeal is dismissed and the Civil Application is also disposed of.

(SANDEEP K. SHINDE, J)