

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

**SECOND APPEAL NO.314 OF 2014
WITH
CIVIL APPLICATION NO.776 OF 2014
IN
SECOND APPEAL NO.314 OF 2014**

Govinda Hari Devardekar
since deceased through L.Rs
Pandurang Govind Devardekar and Ors. ... Appellants

Versus

Santaram Ganpat Shinge
since deceased through L.Rs
Smt. Suman Santaram Shinge and Ors. ... Respondents

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Mr. N.J. Patil I/b. Mr. S.R. Page for Appellants.
Mr. Datta H. Pawar for Respondent Nos.1A, 1B and 2.

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**CORAM : M. S. KARNIK, J.
DATE : 12th JUNE, 2019.**

P. C.:

1. Heard learned counsel for the appellants and learned counsel for the respondents.

2. The appellant is the original plaintiff. The plaintiff had filed a Suit alleging that the respondent had encroached on his property to the extent of 7 sq. meters. It is the contention of the learned counsel for the appellant that he is the owner of city survey No.580 of mouje Parite taluka Karveer admeasuring

202.3 sq. meters. Learned counsel would submit that the western side wall of city survey No.580 is the disputed wall. Learned counsel for the appellant submitted that this wall is in the property of the appellant.

3. On the other hand it is the case of the respondents that the said wall is a part of their property and exclusively belongs to them. The appellant therefore filed a Suit for restraining the defendant permanently from making any encroachment on the western side of the suit property.

4. The Trial Court on the basis of the evidence especially the property card Exhibit 42 and the enquiry extract Exhibit 43 and so also a Sanad came to the conclusion that city survey No.580 is owned and in possession of the appellant. However in so far as the disputed wall is concerned the Trial Court arrived at the finding that there is no evidence on record to show that the said wall is in the property belonging to the appellant. The Trial Court relied upon deposition of defendant No.1 that the disputed wall was agreed to be kept or treated as a common wall. In this view of the matter, the Trial Court found that the appellant could not show that the disputed wall is in his portion of the property

nor the respondent could establish that said wall is part of their property.

5. In so far as the dispute relating to the drain water which goes into property of the appellants as a result of which much inconvenience is caused to the appellants, the Trial Court came to the conclusion that there is no evidence to show that the drain water is going into the property of the appellants. The Trial Court also observed that boundary between the city survey No.580 belonging to the appellant and city survey No.581 belonging to the respondent is not properly fixed.

6. The Appellate Court except for the ownership of the appellant in respect of city survey No.580 concurred with the findings of the Trial Court. The Appellate Court held that the plaintiff has not proved that he is the owner of the suit property in respect of city survey No.580 to the extent of 202.3 sq. meters. In my view this finding as recorded by the Appellate Court is not correct. In any case learned counsel for the respondent submitted that he is not disputing the title and ownership of the appellant in city survey No.580 but he has some dispute about the measurements. In my opinion, therefore the finding of the

Appellate Court as far as point No.1 is concerned needs to interfered with. In this view of the matter, the finding of the Appellate Court on point No.1 to that extent is set aside.

7. As observed by the Trial Court and as submitted by learned counsel for the appellant as well as respondent there is a dispute as regards proper fixation of boundaries. The parties are always at a liberty to adopt appropriate proceedings in accordance with law to determine the same.

8. Having regard to the concurrent findings of fact recorded, I am not inclined to interfere with the findings arrived at by the Courts below based on the evidence on record. The present Appeal does not involve any substantial question of law. Subject to what observed herein above, the Appeal is dismissed with no order as to costs.

9. In view of the dismissal of the Appeal, Civil Application is disposed of accordingly.

(M. S. KARNIK, J.)