

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 685 OF 2015

ALONGWITH

CIVIL APPLICATION (ST) NO. 35302 OF 2017

**Mansing Baburao Jadhav,
Deceased through legal heirs,
Smt.Mangala Mansing Jadhav & Ors.**

..... Appellants

VERSUS

Sau. Jijabai Mahadev Jadhav & Ors.

..... Respondents

Mr.Yuvraj Patil, a/w. Mr.Pankaj Deokar for the Appellant nos. 1-A to 1-C.

CORAM : R.D. DHANUKA, J.

DATE : 23rd SEPTEMBER, 2019

P.C.

Civil Application (St) No.35302 of 2017 not on board. Taken on board.

2. By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellants (original defendants) have impugned the judgment and decree dated 12th January,2015 passed by the learned 1st Adhoc Additional District Judge – 2, Baramati, District Pune dismissing the Regular Civil Suit No.76 of 2008 and upholding the judgment and decree dated 8th October,2010 passed by the learned Civil Judge, Junior Division, Baramati in Regular Civil Suit No.218 of 2004 filed by the respondents (original plaintiffs) *inter alia* praying for recovery of the possession of the suit property from the appellants.

3. The suit for possession was resisted by the appellants. The

appellants have examined two witnesses whereas the plaintiffs have examined other two witnesses. After considering the documentary and documentary evidence, the trial court come to the conclusion that the plaintiffs have proved the encroachment of the defendants over the suit property. The defendants could not prove any right, title and interest in the encroached portion. The courts below have disbelieved the submissions of the defendants that they were in legal possession of the suit property. The suit filed by the defendants i.e. Special Civil Suit No.33 of 1995 contending that they were in possession also came to be dismissed. The first appeal is not even numbered since last 17 years.

4. First Appellate Court independently considered the documentary and oral evidence led by the parties and have rendered a finding that the plaintiffs have proved that the defendants have made encroachment over the suit property to the extent of 1 Acre and 37.5 Gunthas and that the plaintiffs are entitled to recover possession from the defendants in respect of the said encroached land.

5. In my view, the findings rendered by the two courts below being not perverse, do not warrant any interference by this court in this second appeal. No substantial question of law arises in this appeal.

6. Second appeal is accordingly dismissed. No order as to costs. In view of dismissal of the second appeal, Civil Application (St) No.35302 of 2017 does not survive and is accordingly dismissed.

[R.D.DHANUKA, J.]