

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1320 OF 2005

Subhash Babu Dhuri

.....Applicant

V/s.

Gurunath Sitaram Kalsekar
and Ors.

....Respondents

* * * *

Mr. G.H. Keluskar, Advocate for the applicant.

Mr. D.S. Mhaispurkar, Advocate for respondents no.1 and 2.

CORAM : SANDEEP K. SHINDE, J.**Wednesday, 10th April, 2019.****P.C. :**

1. Heard learned Counsel for the parties.
2. Aggrieved by the judgment and decree passed in Regular Civil Appeal No. 207 of 2001 by the learned Additional District Judge, Sindhudurg at Oras, original defendant no.3 has preferred this Appeal. By this decree, appellant-defendant no.3 is directed to handover vacant possession of the suit premises to the plaintiff and pay compensation of Rs.500/- to him.

3. The facts of the case in nutshell may be stated as follows :-

. Respondent no.1 herein filed a suit for mandatory injunction and damages alleging defendant no.3 has encroached over the suit land and constructed house thereon. The suit land is Survey No.143/7. One-third portion of this land is in possession of plaintiffs-defendants no.1 and 2; remaining two-third in possession of defendant no.4 and defendants no.5 and 6 together to the extent of one-third each. The evidence in the form of revenue entries has established the fact that a distinct and separate portion from land, Survey No.143/7 is in possession of plaintiffs-defendants no.1 and 2. The revenue record in the form of 7/12 extract and the document in the name of Aakar Phod Patrak as Exhibit-91 has established the fact that plaintiffs-defendants no.1 and 2 are in possession of one-third divided share of Gat No.143/7 which is the suit property. It is not in dispute that, the contesting defendant/appellant herein is an adjoining land holder whose land bears Survey No.142/35. It is the plaintiff's case

that, in September, 1987 defendant no.3 had applied for permission to construct the house on land Survey No.144/27. However, he commenced the construction on Land Survey No.143/7 and therefore he filed a suit for mandatory injunction for removal of the house and possession of the land encroached by the defendant no.3.

7. The learned trial Judge dismissed the suit having found the plaintiffs could not prove or establish their title to the suit land.

8. The appellant-defendant no.3 in the written statement denied the claim and title of the plaintiffs and would assert that, he is the co-owner of Survey No.143/7.

9. The Appellate Court, after carefully scrutiny of the documentary evidence, which was in the form of revenue entries, aakar phod patrak as recorded a finding of fact in para-11 that the plaintiffs-defendants no.1 and 2 are in possession of one-third demarcated portion of land, Survey No.143/7. It may be stated that, defendant has contended that, he is the co-owner of the land bearing Survey No.143/7. He could not establish this fact. The

learned trial Judge, to ascertain the factum of encroachment, had appointed the Court Commissioner, who has produced the Map at Exhibit-32. This Map shows that, defendant no.3 has constructed the house on land Survey No.143/7. This fact, clearly goes to show that, defendant no.3 has encroached over the suit land bearing No.143/7. Besides, a fact cannot be ignored that, the Gram Panchayat had granted permission to defendant no.3 to construct the house on Survey No.144/27.

10. Thus, taking into consideration the evidence on record, the Appellate Court has recorded a finding consistent with the evidence. It is not pointed out that, this finding is perverse and contrary to the evidence on record. That for the reasons stated hereinabove, the Appeal does not give rise to any substantial question of law. The same is dismissed.

11. The learned Counsel for the appellant prays for stay. The request is rejected.

(SANDEEP K. SHINDE, J)