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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.48 OF 2017**

Sou. Shashikala Sarjerao More	... Appellant
Versus	
Sou Indubai Balasaheb Thorat	... Respondent

Mr. Vilas Babanrao Tapkir for the Appellant.
Mr. Mukund Pise for the Respondent.

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 11th DECEMBER, 2019**

P.C.:

1 Heard. This is a second appeal under section 100 of the Civil Procedure Code impugning the judgment and order dated 13th February 2015 passed by the learned District Judge – 9, Pune in C.A. No.77 of 2014 thereby confirming the judgment and order passed by the 6th Jt. Civil Judge, Junior Division, Pune in R.C.S. No.578 of 2009 on 31st August 2012.

2 The substantial question of law as demonstrated by the learned counsel for the appellant is that the Appellate Court has not considered the sale deed dated 17th January 2002 executed by the original landlord Sou. Neeta Bhau Jagtap and Dattatray Maruti Ovhal admeasuring about 1250 sq. ft. The appellant who happens to be an original plaintiff has filed the suit in the year 2009 seeking perpetual injunction and removal of encroachment by the defendant on the subject land.

3 It is seen from the records that the learned Appellate Court has considered the judgment of the trial Court in its proper perspective and has observed that the original defendant Indubai Thorat has filed a suit against the original landlord in the year 1995 as sale deed in favour of the defendant in the year 2008 in which the defendant was constrained to file a suit for specific performance on the basis of an agreement to sale dated 5th April 1995. The Court cannot be oblivious of the fact that the original landlord is not a party to the suit and hence, not a party to the appeal also. The substantial question of law as contended by the learned counsel for the appellant is the appreciation of first Appellate Court especially to the findings recorded by the trial Court. In fact, upon considering the boundaries of the land which was sold and the subject suit property in the plaint are at variance and therefore, the original plaintiff could not have pleaded encroachment on the land adjacent property/ property mentioned in the sale deed dated 17th January 2002 which was purchased by them.

4 Non-impleading of the original landlord would also amount to non-joinder of necessary parties to the suit. Hence, appeal being devoid of any merits deserves to be dismissed with no orders as to costs.

(SMT. SADHANA S. JADHAV, J.)