

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

SECOND APPEAL NO.71 OF 2019

(Shri Gopal s/o Dayaram Fattig ..vs. Shri Mansram Kanhu Lanjewar)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S. Kotwal, Counsel for the appellant.

CORAM : ROHIT B. DEO, J.

DATED : 26-04-2019

The appellant is the original defendant in Regular Civil Suit 17/2000 brought by the respondent-plaintiff for recovery of possession of the encroached portion admeasuring 12 feet x 46 feet.

2. By judgment and decree dated 11-2-2016, the trial Court decreed the suit. Regular Civil Appeal 34/2016 preferred by the defendant is dismissed by the Principal District Judge, Bhandara, by judgment and decree dated 27-8-2018.

3. The Courts below have concurrently held that the plaintiff has proved the encroachment. It is further recorded by the trial Court, that while cross-examining the plaintiff a suggestion is given that the encroachment is committed by the defendant one year prior to the institution of the suit.

4. The submission of the learned Counsel is that the

reliance by the Courts below on map Exhibit 60 which proved by Shri Satish Rekawar (PW 3) gives rise to a substantial question of law. The contention appears to be that unless the suit property is measured by appointing Government Cadastral Surveyor, finding of encroachment would not be sustainable. The submission is noted only for rejection.

5. The Courts below have relied on the sale-deed which is proved by the plaintiff, the evidence adduced and the map Exhibit 60 drawn by Shri Satish Rekawar. The concurrent finding recorded by the Courts below that the encroachment is proved, is based on consideration of the entire evidence on record. No evidence in rebuttal is adduced by the defendant to suggest that the map drawn by Shri Satish Rekawar is incorrect. *Au contraire*, a suggestion is given to the plaintiff during the cross-examination that the encroachment is committed one year prior to the institution of the suit. The findings recorded by the Courts below are pure findings of fact, which are not shown to be perverse.

6. No question of law much less substantial question of law is involved in this appeal.

7. The appeal is dismissed with no order as to costs.

JUDGE