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

**SECOND APPEAL NO. 118 OF 2018
WITH
CIVIL APPLICATION NO. 1379 OF 2016
IN
SECOND APPEAL NO. 118 OF 2018**

Shamrao Babu Shinde-Karande and othersAppellants

V/s.

Shankar Chillu Shelke DeceasedRespondents
through LR's and others

Mr. Kuldeep U. Nikam for the appellants

Mr. Nikhil Pawar for respondent nos. 2A to 2C, 2D(1) to 2D(3)

Ms. Rati Sinhasane i/b Mr. Umesh Mankapure for respondent no.
3A

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 6, 2020.

P.C.

This Appeal is by original-plaintiff whose suit for permanent injunction and possession came to be decided on 19/01/2009 thereby dismissing the same. Feeling aggrieved, present appellant filed Regular Civil Appeal No. 39 of 2009 which came to be partly decreed. Against the claim of appellant-plaintiff for possession and injunction of land to the extent of 133 ft X 44 ft, Appellate Court

granted injunction against defendant in favour of appellant thereby restraining them from disturbing the possession of the appellant over the land 139 ft. South North and East West 20 ft.

2] While assailing the aforesaid Judgment of the Appellate Court, learned counsel for the appellant submits that once in the report of the Court Commissioner it is established that land to the extent of 139 ft X 40 ft is available on the spot in regard to which relief of declaration and possession was sought, the Court committed an error in granting relief to the extent of 50% of the property. He would try to substantiate his case based on the alleged oral Gift Deed by the predecessor in title.

3] With the assistance, I have perused both judgments i.e. of the Trial Court and Appellate Court.

4] At the behest of the appellant, the Court Commissioner, after having measured the land, noticed that as against the claim made by the appellant in regard to 133 ft X 44 ft of the land, 139 ft South North and 10 Ft East West was located on the spot of the Suit

property.

5] Furthermore, considering the fact that the suit claim was not strenuously contested by the parties has prompted the appellant to enjoy the property to the extent of 139 ft X 20 ft as is reflected in the Judgment of the Appellate Court. Both these findings are based on oral and documentary evidence of the parties on record. The findings recorded in Appeal no. 288 of 1999 on 02/03/2006 in the matter of Suit for injunction and removal of encroachment has weighed before the Appellate Court while granting relief.

6] As the relief based on oral and documentary evidence available on record, this Court hardly notice any error apparent on the face of record which warrants interference. Appeal lacks merit, stands dismissed.

7] As a consequence of above, pending Civil Application also stands disposed of.

[NITIN W. SAMBRE, J.]