

3. *Suit property has been purchased by the plff. Out of C.T.S. No.1545 one room towards Southern side was illegally possessed by the defendants and for that purpose the plaintiff had filed R.C.S. No.255/82 against defendant No.1 and Ors in which on 5/9/85 decree was passed in favour of the plaintiff. The defendants preferred an appeal bearing No.418/85 against the judgment and decree passed in R.C.S. No.255/82 and the same was dismissed prior to eight days and the previous decree in R.C.S. No.255/82 was confirmed. The plaintiff for the purpose of execution of the decree in R.C.S. No.255/82 has filed Reg.Dkt.No.207/85 and same is pending in the Court. Without prejudice to the rights of the plaintiff in the said darkhast, present suit is filed.”*

2. The subject matter of the suit is an encroachment made by the appellants - defendants on a lane, forming part of C.T.S. No.1545. Both the Courts below have held the appellants - defendants to have made encroachment on a public lane, as has been averred in the plaint.

3. The learned Advocate for the appellants would submit that the respondents - plaintiffs approached the Court with a case that the appellants - defendants made construction on a lane which belongs to them. The trial Court framed an issue about ownership of

the plaintiff over the suit property and answered the same in affirmative by adding that she is not owner of the lane. The learned Advocate would further submit that the suit is therefore not maintainable. Since it is a suit for removal of encroachment, the plaint was not accompanied with a sketch or map indicating the alleged encroachment. The suit was, therefore, hit for want of compliance of Order 7 Rule 3 C.P.C. The respondent - plaintiff is residing at a brick kiln. As such, due to the alleged construction, there was no question of obstruction of light and air received by the respondent - plaintiff to her residence. It was also submitted that the owner of the property is a necessary party to the suit and the suit is therefore liable to be dismissed for non-joinder of necessary parties. The question of *locus standi* of the plaintiff has also been raised.

4. I have considered the submissions advanced by the learned Advocate as against the evidence in the case which has been appreciated by the trial Court and the first appellate Court, as well. Pending the suit, the Court Commissioner was appointed. He gave his report with a map Exh.14. The trial Court found the right of the plaintiffs to make use of the public lane has been substantially affected due to the construction made by the appellants -

defendants. Admittedly, the construction made by the appellants - defendants stands on public lane. The respondent - plaintiff has along with others, right to make use of public lane. Relying on the authorities, the trial Court held that, in such a situation, suit for removal of encroachment on public property is maintainable. The appellate Court has upheld the finding of facts recorded by the trial Court. I do not propose to reproduce the reasons given by the appellate Court. Suffice it to say that the land beneath the construction made by the appellants - defendants is a public lane. The respondent - plaintiff residing in the immediate neighbourhood, has every right to make use of the public lane along with others. Both the Courts below have, therefore, rightly held the suit to have been maintainable. Since the appellants - defendants have proved to have made an encroachment on a public lane causing obstruction to the user of the land by the neighbours, the trial Court has rightly decreed the suit. The first appellate Court has not committed any error in confirming the decree passed by the trial Court.

5. This Court finds no substantial question of law to have been involved in this Second Appeal. The Second Appeal, therefore, fails. The same is dismissed.

6. In view of dismissal of the Second Appeal, Civil Application No.11448 of 2013 does not survive. The same is therefore, disposed of.

[R. G. AVACHAT, J.]

SMS