

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.845 OF 2017
WITH
CIVIL APPLICATION NO.1725 OF 2017

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Shri. Tukaram Bhikaji Rangankar & Ors.

..Appellants

Versus

Shri. Diwakar Narhar Phadke

Since deceased through legal heirs

Smt. Sunanda Diwakar Phadke & Ors.

..Respondents

Mr. N. N. Bhadrashete, for the Appellants.

Mr. Yash Kataria a/w Manasi Hirve i/by M/s. Divekar & Co., for
Respondent Nos.1(1) to 1(4) & 2(a) to 2(c).

CORAM : NITIN W. SAMBRE, J.

DATE : 17th NOVEMBER, 2022

PC.

1. In a suit for removal of encroachment preferred by the respondents/plaintiffs, appellants/defendants suffered concurrent findings before both the Courts below. As such, this second appeal.

2. The question of law which Mr. N. N. Bhadrashete, counsel appearing for the appellants would urge is, whether both the Courts below have committed an error in recording findings on the issue of limitation against the appellants. So as to substantiate his claim, he would rely on the evidence of three witnesses which are examined by him, so also the fact that the respondents have failed to demonstrate that the encroachment was of the year 1997.

3. The aforesaid contentions are opposed by the counsel for respondents/plaintiffs/decreed-holders.

4. I have appreciated the submissions.

5. The moment appellants/defendants come with a defence that the suit is barred by limitation as the alleged construction by the appellants was in the year 1984-85, the onus shifts on the appellants to prove the same, but for oral evidence of three witnesses, there is hardly any documentary evidence to infer that the construction was carried out by the appellants in 1984-85. Considering the nature of pleadings against the appellants that of construction on encroached area, the least that was expected of the appellants to prove the same by placing on record any documentary evidence about the alleged construction carried out by them, which they have failed to.

6. As such, the finding of fact recorded by both the Courts below that the appellants have failed to discharge their burden, in my opinion, does not warrant interference in the second appellate jurisdiction. The second appeal as such *sans* substantial question of law.

7. The second appeal as such stands dismissed.

8. In view of dismissal of appeal, pending application also stands disposed of.

[NITIN W. SAMBRE, J.]