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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.541 OF 2017**

Shri Ganpatrao Khanderao Pharande Appellant.
V/s
Shri Jagannath Vithoba Shinde
Deceased through Lrs
1-A Smt. Shantabai Jagannath Shinde
and Others Respondents.

Mr. Vijay Killedar for the Appellant.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 03, 2022

P.C.:-

1] This appeal is by the original Plaintiff who has initiated Regular Civil Suit No.254 of 2000 with a prayer for removal of encroachment and mandatory injunction for removal of illegal construction and injunction not to cause nuisance by releasing waste water on the road which is used by the Plaintiff. Said suit was dismissed vide judgment and decree dated 19/1/2012 passed by Joint Civil Judge, Junior Division, Wai. Regular Civil Appeal No.123 of 2012 preferred by Appellant/Plaintiff under Section 96 of the Civil Procedure Code was also dismissed on 16/8/2016. As such, this Second Appeal under

Section 100 of the Civil Procedure Code.

2] Mr. Killedar, learned Counsel for the Appellant has invited my attention to the examination-in-chief of Plaintiff. According to him, Plaintiff has produced on record Exhibit-39 i.e. report No.30 of 2008 issued by Taluka Inspector of land records which contains map. He has also invited my attention to Exhibit-40 which contains the map prepared by the Commissioner alongwith its report. As such, according to him, courts below have committed an error in recording finding that Appellant has failed to prove exact area of CTS No.285, exact location of the alleged road and sewerage line of 5 ft width, AND suit map or map pertaining to CTS No.285.

3] I have appreciated said contentions.

4] Claim of the Plaintiff/Appellant is based on the illegal conduct of the Respondent in the matter of construction of wall, thereby encroaching area of CTS No.285, disposal of sewerage water on the road of 5 ft. which is used by the Appellant which goes through CTS

No.285 and CTS No.286. Though Mr. Killedar, Counsel for the Appellant has invited my attention to the aforesaid maps i.e. Exhibit-40 and 39, fact remains that merely by producing such documents, Plaintiff has not established his case, as he has not adduced any evidence in support of his case to prove encroachment on the area. Both the Courts have concurrently held that Appellant has failed to establish his case.

5] In view of above, no question of law is involved this Second Appeal. Second Appeal as such fail and same stands dismissed.

(NITIN W. SAMBRE, J.)