

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 332 OF 2014

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| 1. Tukaram s/o. Vishnudas Jagdand
Age. 35 years, Occ. Agri., | .. | Appellants |
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| 2. Kamlakar s/o. Vishnudas Jogdand
Age. 40 years, Occ. Agri./Service,
Both R/o. Devi Babhalgaon,
Tq. & Dist. Beed,
Presently residing at Chausala,
Tq. & Dist. Beed. | | |

Versus

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| 1. Sukhadev s/o. Kondiba Lahane
Age. 75 years, Occ. Agri., | .. | Respondents |
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| 2. Rahibai s/o. w/o. Udhav Lahane
Age. 60 years, Occ. Household, | | |
| 3. Shrimant s/o. Madhav Lahane
Age. 55 years, Occ. Agri., | | |
| 4. Rajendra s/o. Madhav Lahane
Age. 55 years, Occ. Agri., | | |
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| 5. Sanjay s/o. Madhav Lahane
Age. 40 years, Occ. Agri.,
All R/o. Jeba, Tq. Washi,
Dist. Osmanabad. | | |
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| 6. Kalyan s/o. Govind Khade,
Age. 40 years, Occ. Agri.,
R/o. Hingni (Kh), Tq. & Dist. Beed. | | |

Mr.Nandkishor U. Yadav, Advocate for the appellants.

CORAM : KISHORE C. SANT, J.
DATED : 23.08.2023

PC :-

01. This Second Appeal is filed challenging judgment and order dated 09.10.2012 passed by the learned District Judge, Beed in RCA No.192 of 2008, whereby the appeal is dismissed with costs and the judgment and order passed by the learned Jt. CJJD, Beed dated 17.07.2008 came to be confirmed. It is case of the appellants/original defendants that they are owners of the land admeasuring 56 R in Survey No.52/5, Block No.245 situated at village Jeba. However, there is encroachment made by the defendants on the said land. Thus, the suit was filed for declaration of ownership and recovery of possession of the suit land. It is the case of the plaintiffs that the defendants have committed trespass on the suit land on 20.03.2001 and obstructed the plaintiff's possession. The land was measured by the TILR. However, nothing has come on record to prove encroachment. The learned Trial Judge found that the plaintiffs have failed to prove encroachment. The Trial Court further observed that the plaintiffs could not bring any evidence on record to prove his case and even the title over the suit land. The plaintiffs also could not

establish that the suit-land is part and parcel of Block No.254 and dismissed the suit.

02. In the appeal request of the appellants is not accepted and the appeal therefore came to be dismissed.

03. The learned Advocate appearing for the appellants submits based upon their pleading that it was a clear case to decree the suit. He claims that the plaintiffs are owners of the suit land on the basis of 7/12 extract. On the point of title, he submits that since the land is ancestral land and the plaintiffs have received the same in partition, that was sufficient to prove their ownership and the title over the suit land. He submits that the evidence of the TILR was not properly considered and both the Courts below have committed wrong in not accepting the case of the appellants.

04. This Court has gone through the judgments of the Courts below and the submissions. As stated above, the only argument of the appellant is that the Courts ought to have accepted 7/12 extract as a document of title to show ownership of the appellants. The appellants, however, could not point

out as to anything about partition or as to how they received the suit property as alleged by him. The appellants also could not show as to how the encroachment over the land is proved or what evidence was led before the Court in support of his case. The appellants also could not point out as to what error is committed by the Courts below. This Court finds that no case is made out and no substantial question of law arises. As both the Courts below have dealt with the question of facts, this Court need not interfere with the same in the limited jurisdiction available in Second Appeal.

05. The Second Appeal deserves to be dismissed and same is dismissed with no order as to costs.

[KISHORE C. SANT, J.]