

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

SECOND APPEAL NO. 185 OF 2018

**CHATURBHUI SHAMRAO DURE AND OTHERS
VERSUS
GUNWANT NARHARI DURE AND OTHERS**

...
Advocate for Appellants : Mr. Manale Satish S.

**CORAM : R.M. JOSHI, J.
DATE : 03rd May, 2023**

PER COURT :

1. Heard.
2. Learned counsel for the plaintiffs vehemently argued that the First Appellate Court has committed serious error in appreciating the pleadings in the plaint and not considering the evidence on record. More particularly, report of the Court Commissioner which shows the encroachment being done by the respondent nos. 1 to 3. According to him, the Trial Court has appreciated the entire evidence on record and also taken into consideration the admission of defendant no. 1 that plaintiff and defendants are the owners of the half portion of the suit property.

3. This appeal is under Section 100 of Civil Procedure Code, wherein, the Court has extremely limited jurisdiction to interfere into the judgment and decree and the findings recorded by the Courts below, unless they are perverse. Mere erroneous findings, if not perverse, also cannot be interfered with.

4. No doubt, learned Trial Court has sought to take into consideration the evidence lead on record. However, the Trial Court considered the evidence in complete ignorance of relevant pleadings of the plaintiff. In the plaint it is specifically stated that the new wall was to be erected at the place of old wall which was got demolished in an earthquake. By ignoring this case of plaintiff evidence of witnesses is considered while decreeing suit.

5. Before dwelling upon the evidence, the Court is required to consider the pleadings of the parties. Appreciation of evidence not in context of pleadings would be an error. First Appellate Court has rightly considered the pleadings of the plaintiff in the plaint, wherein, such specific plead has been raised. In view of the said plea, the finding recorded by the First Appellate Court cannot be considered as perverted. In the result, this Court finds that no substantial question of

law is involved in the present appeal.

6. Hence, appeal stands dismissed.

7. Parties to bear their own costs.

[R.M. JOSHI, J.]

SPChauhan