

Harish

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 844 OF 2015**

Tukaram Ganpat Pawar ...Appellant
V/s.

Pandurang Raoji Patil & Anr. ...Respondents

Mr. Surel S. Shah, for the Appellant.

Mr. D. W. Bhosale, for the Respondents.

CORAM : MADHAV J. JAMDAR, J.

DATE : 06th FEBRUARY, 2023

P.C.:

1. The appellant is the Original Defendant. By the present Appeal the Appellant is challenging the Judgment and Decree dated 23rd May, 2008 passed by the learned Civil Judge, Junior Division, Sangola in Regular Civil Suit No. 25 of 2002. The Defendant challenged the said Judgment and Decree by filing Regular Civil Appeal No. 80 of 2008 and the learned First Appellant Court dismissed the said Appeal by Judgment and Decree dated 23rd February, 2015.

2. By the said Judgment and Decree, the learned Trial Court decreed the Suit filed by the Respondents i.e. Plaintiffs. The learned trial Court has held that the Plaintiffs proved

their title over the suit property and possession over certain portion of the suit property. It has been held that the Defendant made encroachment on 20-Ares of land over the Suit Property and therefore, granted decree of possession.

3. Mr. Surel Shah, learned counsel appearing for the Appellant submitted that both the Courts have concurrently held that the Plaintiffs proved their title over the suit property and possession over certain portion of the suit property. It has been held that the Defendant made encroachment on 20-Ares of land over the Suit Property. By the said concurrent finding, the Suit was decreed and the Appeal filed by the Respondents has been dismissed. He submitted that the findings recorded by the learned Courts are contrary to the evidence on record and therefore, following substantial question of law is raised in the Second Appeal;

“Whether the findings recorded by the learned Trial Court and the learned Appellate Court are in accordance with the evidence on record?”

4. Mr. Dnyaneshwar Bhosale, learned counsel appearing for the Respondents submitted that both the Courts after considering the evidence on record have concurrently found

against the Appellant and therefore, there is no substance in the substantial question of law raised by Mr. Surel Shah, learned counsel appearing for the Appellant.

5. The learned Trial Court decreed the suit filed by the Respondents i.e. Plaintiffs and the challenge to the said Judgment and Decree failed before the learned Trial Appellate Court.

6. Perusal of the Judgments of both the Courts show that by considering the evidence on record both the Courts have concurrently found that, the Plaintiffs proved their title over the suit property and possession over certain portion of the suit property. It has been held that the Defendant made encroachment on 20-Ares of land over the Suit Property. Both the Courts have examined the evidence on record in detail and recorded the concurrent findings of fact.

7. Therefore, there is no substance in the substantial question of law as submitted by Mr. Surel Shah, learned counsel appearing for the Appellant. Therefore, the Second appeal is dismissed however, with no order as to costs.

(MADHAV J. JAMDAR, J.)