

Harish

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.856 OF 2022
WITH
INTERIM APPLICATION NO. 2613 OF 2023
IN
SECOND APPEAL NO.856 OF 2022**

Shri. Shamrao Mhadu Patil & Ors.

...Appellants/
Applicant

Versus

Shri. Rajaram Bapu Jadhav & Ors

....Respondents/
Respondent

Mr. Ruturaj Pawar, for the Appellants/Applicants.

CORAM : MADHAV J. JAMDAR, J.

DATE : 30th MARCH, 2023

P.C.:

1. Heard Mr. Pawar, learned counsel appearing for the Appellant who is the Original Defendant.
2. The Appellant by the present Second Appeal is challenging legality and validity of Judgment and Decree dated 15th April, 2014 passed by learned 13th Joint Civil Judge, Junior Division, Kolhapur in Suit bearing RCS No. 736 of 2011 as well as Judgment and Decree dated 1st December, 2021 passed by learned District Judge No. 4, Kolhapur in Regular Civil Appeal No. 247 of 2017.
3. Mr. Pawar submitted that the following substantial question

of law is involved in this Second Appeal :

"Whether the Plaintiff has given proper description of the Suit Property and whether the Plaintiff has proved the area and boundaries of the Suit Property. "

4. In this particular case the Plaintiff has given Gram Panchayat property number as well as number of open plots situated at Mauje. Andur, Tal- Gaganbavada, Dist- Kolhapur. The Plaintiff has also set out boundaries of the property. The Plaintiff has laid his own evidence and offered himself for cross-examination. He has been cross-examined extensively. However nothing has been brought on record to point out that, the description of the suit property is not proper. It is the settled legal position that, if there is variance between the area of the suit property and boundaries then, the boundaries shall prevail. In this particular case, the Gram Panchayat Milkat Property No. 87, 88 and 89 which are the residential houses are mentioned by the Plaintiff as suit properties as well as open lands in and around the said houses which are given Property Nos. 87/1, 88/1 and 89/1 are also mentioned in the Plaint. He has also given the boundaries of the suit properties as more particularly set out in the plaint. Therefore, the said boundaries will prevail.

5. It is the admitted position that, although, Defendants have filed written statements they have not laid any evidence.

Therefore, the learned Trial Court and the learned First Appellate Court have held that the adverse inference is required to be drawn against the Defendants.

6. Both the Courts have concurrently held that, the Plaintiffs proved the possession over the suit property and, therefore, granted injunction. Although it is the claim of the Defendants that they are the owners of certain portion of the suit property, no evidence is laid by them and therefore, rightly adverse inference is drawn by the learned Trial Court as well as Learned First Appellate Court against them.

7. Therefore there is no substance in the substantial question of law raised by Mr. Pawar, learned counsel appearing for the Appellant.

8. The Second Appeal is dismissed however, with no order as to costs.

9. In view of dismissal of Second Appeal, nothing survives in the Interim Application and the same is also dismissed.

(MADHAV J. JAMDAR, J.)