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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 841 OF 2022**

Nanasaheb Moru Mahadik

... Appellant

vs.

Narasingh Tukaram Mahadik (Since Decd Thr. ... Respondents
Lrs) Jaysingh Nar

Ms. Pooja Malik i/b Mr Narayan Bubna, for the Appellant.

None for the Respondents.

CORAM : GAURI GODSE, J.

DATED : 9th JUNE, 2023

P.C. :-

1. This Second Appeal is preferred by the original plaintiff for challenging the concurrent judgments and decrees, thereby dismissing the suit filed by him.

2. The Appellant filed suit for an injunction restraining Respondent Nos. 1 and 2 from carrying out encroachment and/or construction on the suit property. The suit property described by the Appellant is 20 R land out of Gat No. 743. The injunction is sought against Respondents Nos. 1 and 2. Respondent Nos.3 to 4 are the brothers of the Appellant. Ownership of the Appellant over the suit property is not disputed. Ownership of Respondent Nos. 1 and 2 on the adjoining Gat No. 740 is also not

disputed.

3. Both the Courts have accepted the title of the Appellant over the suit property. However, have refused to grant a decree for injunction by holding that there is a vacant open space in between the suit property and Gat No. 740 belonging to Respondent Nos. 1 and 2. By considering the evidence on record, both the Courts have held that there was no evidence produced to show that Respondent Nos. 1 and 2 have encroached and/or attempted to encroach as alleged by the Appellant. Both the Courts have dismissed the suit for simplicitor injunction.

4. Learned counsel appearing for the Appellant have submitted that both the Courts accepted the title of the Appellant over the suit property. However, erroneously refused to grant a decree of injunction only on the ground that the sale deed with respect to the suit property was not produced on record and that there was no demarcation of the suit property proved. She submitted that the Appellant pleaded with respect to the reasons for not carrying out demarcation on the suit property in view of the obstruction raised by Respondent Nos. 1 and 2. She, therefore, submitted that the question of law arises in Second Appeal, as inspite of accepting the title of the Appellant by both the Courts, injunction protecting the suit property belonging to the Appellant is refused.

5. I have perused the record of the Second Appeal. Both the Courts

have concurrently held that there was an open space between the suit property and the property belonging to Respondent Nos. 1 and 2 and that on the basis of the evidence on record, it was not proved that there was any encroachment sought to be made by Respondent Nos. 1 and 2 as pleaded by the Appellant. The grounds raised on behalf of the Appellant are with respect to factual aspects. Reappreciation of the facts and evidence is not permissible under Section 100 of the Civil Procedure Code. The Second Appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed.

(GAURI GODSE, J.)