



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

2 SECOND APPEAL NO. 18 OF 2015

PRAKASH TRIMBAK SONAR AND ANOTHER
VERSUS
NIVARUTTI BHIMRAJ DEVKAR AND OTHERS

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Mr. P. S. Pawar, Advocate for the Appellant

CORAM : Y. G. KHOBRAGADE, J.
DATE : 18th March, 2024

ORDER:

1. Heard Mr. P. S. Pawar, the learned counsel appearing for the appellants/original plaintiffs at length.
2. On the face of record, it appears that the appellants who are original plaintiffs had filed RCS No.230 of 2000 claiming that the respondents/defendants have made encroachment on some portion of their land. The plaintiffs pleaded that on 25.06.1998, they purchased the suit property from the defendants under the registered sale deed. On the date of execution of sale deed, the defendants delivered possession land to them but subsequently, when they went to Nashik, the defendants, by taking undue advantage of their absence, made encroachment on some portion of their land i.e. 5 feet from East-West side and 20 to 25 feet from South-North side. The defendants filed written statement at Exh. 12 and denied about making encroachment on the land of the plaintiffs. The defendants have denied about sale of

land of 0.5 gunthas to the plaintiffs by the registered sale on 25.06.1998. The plaintiffs were residing at village Kokamthan Tq. Kopargaon at the time of execution of the sale deed and possession of the land described in the sale deed was handed over to the plaintiffs. Since they have not made any encroachment, therefore, they prayed for dismissal of the suit.

3. On the basis of rival pleadings, the learned trial court framed the issues at Exh. 15. The plaintiffs and defendants filed their evidence affidavit as well as they examined witnesses. The measurement of the suit property was conducted by the TILR, Kopargaon, who submitted the report measurement map at Exh 36. As per the evidence of TILR, no encroachment was found. After considering the oral as well as documentary evidence, on 13.01.2006, the learned trial court passed the judgment and decree and dismissed the suit of the plaintiffs. Being aggrieved by the said judgment and decree, the plaintiffs have filed RCA No. 66 of 2006 before the first appellate Court. On 08.11.2012, the learned first appellate court passed the judgment and order and confirmed the judgment and decree passed by the learned trial court by considering the oral as well as documentary evidence. The appellants have not brought any documentary evidence on record to prove that the measurement carried out by the TILR was incorrect. So also, the appellants have not brought any substantial material on record to prove

that the respondents/defendants have made encroachment over 5 feet from East-West side and 20 to 25 feet from South-North side of their land.

4. In view of the above, I do not find any substantial question of law involved in the present appeal and therefore, the appeal deserves to be dismissed. Accordingly the second appeal is dismissed. No order as to costs.

(Y. G. KHOBRADE, J.)

JPChavan