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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 834 OF 2017
WITH
CIVIL APPLICATION NO. 1670 OF 2017
WITH
INTERIM APPLICATION NO. 14365 OF 2024
WITH
INTERIM APPLICATION(ST) NO. 30030 OF 2024
WITH
INTERIM APPLICATION (ST)NO. 30047 OF 2024
IN
SECOND APPEAL NO. 834 OF 2017**

Santosh Mahadeo Aldar ... Appellant/Applicant

vs.

Ravindra Yashwantrao Deshmukh and ... Respondents
Ors

Mr. B.A. Lawate for Appellant.

Mr. Graham Francis i/b. Mr. Vishwanath Talkute for Respondent
No.1.

CORAM : GAURI GODSE, J.

DATED : 18th NOVEMBER 2024

ORDER:

1. Heard learned counsels for the parties. This second appeal is preferred by the original defendant no.2, challenging the concurrent

judgments and decrees granting an injunction against the present appellant, restraining him and the other defendants from obstructing the plaintiff's peaceful possession of the suit property. The suit is filed on the ground that it is the plaintiff's ancestral property.

2. Learned counsel for the appellant submitted that the plaintiff is not an exclusive owner of the suit property. He submits that even defendant no.3 is the co-owner of the suit property. Hence, the plaintiff is not entitled to seek any injunction in respect of the suit property. He further submits that the trial court has relied upon the survey report prepared based on the survey carried out before filing the suit. He submits that such a survey report is not admissible in evidence. He, thus, submits that the decree passed, based on the survey, which is not admissible in evidence, is not sustainable in law.

3. Learned counsel for the appellant further submits that there were no allegations against the appellant that he had carried out any encroachment on the suit property. He, therefore, submits that the plaintiff is not entitled to seek any injunction against this appellant. Learned counsel for the appellant thus submits that all these grounds raise substantial questions of law required to be considered by this court.

4. Learned counsel for respondent no.1, i.e. the original plaintiff supports the impugned judgments and decrees. He submits that both the courts have concurrently held that the plaintiff is in lawful settled possession of the suit property. He submits that none of the arguments raised on behalf of the appellant raise any question of law.

5. To consider the submissions made on behalf of the parties, I have perused the papers of the second appeal as well as copy of the plaint. A perusal of the reasons recorded by both courts indicates that there is no dispute that the suit property is an ancestral property of the plaintiff. Both the courts have thoroughly examined the pleadings and evidence on record and recorded concurrent findings that the plaintiff is in settled lawful possession of the suit property. The grounds of objections raised on behalf of the appellant that the plaintiff would not be entitled to seek any injunction as he is not the absolute owner of the suit property are not necessary to be considered at the behest of the appellant. The appellant does not claim to be a co-owner of the property.

6. The second ground of objection regarding the survey carried out before filing of the suit is without any substance. The survey report and the map are exhibited at Exhibit-47 after examining the

surveyor. Both the courts have considered the supporting evidence of the surveyor and accepted the survey map at Exhibit-47. Both the courts have referred to the revenue records for accepting the plaintiff's case of being in lawful settled possession of the suit property. In view of the supporting oral evidence of the surveyor, both the courts have rightly accepted the evidence on record and admitted the survey map at Exhibit-47.

7. With regard to the third objection regarding there being no allegations of encroachment against the appellant cannot be the ground to refuse injunction as prayed by the plaintiff, who is in the lawful settled possession of the suit property. The reasons recorded by the trial court in reference to the present appellant's pleadings indicate that the appellant sought to claim right in the suit property based on a sale deed. However, the appellant was unable to substantiate his contention regarding any right created based on any sale deed.

8. Both the courts have thoroughly examined the oral and documentary evidence on record and accepted the plaintiff to be in lawful possession of the suit property. I do not find any illegality and perversity in the reasons recorded by both courts. In view of the concurrent findings of facts recorded by both the courts, the grounds

argued on behalf of the appellant would not require any consideration by this court.

9. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed. In view of the dismissal of the second appeal, the pending applications are disposed of as infructuous.

(GAURI GODSE, J.)