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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 400 OF 2021
WITH
INTERIM APPLICATION NO. 2520 OF 2020
IN
SECOND APPEAL NO. 400 OF 2021**

Shri Baban Bandu Dhavale and Ors ... Appellants/Applicants

vs.

Shri Anandrao Maruti Dhavale (Decd.
Thr. Lrs)Shri Hanmant Anandrao
Dhavale and Ors ... Respondents

Mr. Kirankumar Phakade, for Appellants/Applicants.

Mr. Hrishikesh Avhad a/w. Mr. Shailesh Chavan for Respondent No.
1A.

CORAM : GAURI GODSE, J.

DATED : 4th DECEMBER 2024

ORDER:

1. Heard Learned counsel for the parties. This second appeal is preferred by the defendants to challenge the judgment and decree passed by the first appellate court directing the appellants to remove encroachment and hand over possession of the suit property to the plaintiff.

2. Learned counsel for the appellants submits that though the measurement map was produced on record, the measurement of the entire area of both the survey numbers was not carried out. He therefore submits that the first appellate court erred in relying upon the measurement map which was not prepared after the measurement of entire survey which is the subject matter in the suit.

3. Learned counsel for the appellants further submits that in the alternative the appellants had claimed perfection of title by way of an adverse possession. He submits that both the courts erred in not even framing an issue on the defendants' claim on the perfection of title by way of adverse possession. He, therefore, submits that the second appeal would raise substantial questions of law on misappreciation of the pleadings and evidence on record and on the ground of survey not being carried out of the entire land.

4. He, further submits that the claim of appellants regarding the perfection of title by adverse possession would also raise substantial questions of law to be decided in the second appeal.

5. I have perused both the judgments. The first appellate court has recorded the findings of fact by referring to the measurement map on record. The first appellate court has relied upon the measurement map at Exhibit 69 based on the survey carried out on

14th October 2015. The first appellate court recorded in paragraph no.14 of the judgment that measurement map at Exhibit 69 is prepared after carrying out joint measurement of both the lands.

6. The findings recorded by the first appellate court in paragraph no. 14 of the judgment indicates that the evidence in the form of measurement map supported by oral evidence is thoroughly examined by the first appellate court.

7. A perusal of the reasons recorded by the first appellate court does not indicate any illegality or perversity in the findings recorded by the first appellate court. In view of the finding of fact recorded by the first appellate court, the grounds raised on behalf of the appellants regarding the entire survey number not being measured would amount to re-appreciation of the evidence on record which is not permissible under Section 100 of the Civil Procedure Code, 1908.

8. The second ground raised regarding the perfection of title by way of adverse possession would also not require any consideration by this court. A perusal of the written statement indicates that except for a vague pleading that the defendants are in peaceful and unobstructed possession for more than 12 years, there is no specific pleading to support the claim of perfection of title by way of adverse

possession. In absence of any specific pleadings, no fault can be found in the impugned judgment for not framing any issue on adverse possession. The first appellate court has referred to plea of perfection of title by way of adverse possession and held that the plea raised by the defendants was a vague plea without mentioning any date or period for which they were in adverse possession of the encroached portion. The first appellate court has referred to the cause of action pleaded in the suit and thus, did not find it necessary to frame any point on the defendants' claim on adverse possession. I do not find any illegality or perversity in the reasons recorded by the first appellate court.

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

(GAURI GODSE, J.)