

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL (ST.) NO. 12980 OF 2021
WITH
INTERIM APPLICATION (ST.) NO. 2215 OF 2024**

Dinesh Dattatrey More and Ors. **...APPELLANTS**
V/S.

Pandurang Marya More **...RESPONDENT**

Ms. Deepa Kamath *i/by. Mr. Sagar Kamble, for the Appellants.*

Mr. Rahul More, *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 4 March 2024.

P.C. :

1) This Appeal is filed by the Appellant challenging the Decree dated 13 October 2016 passed by the District Judge-2, Raigad, Alibaug by which Regular Civil Appeal No. 161 of 2011 has been allowed by the first Appellate Court setting aside the Decree dated 25 April 2011 passed by the Trial Court in Regular Civil Suit No. 86 of 2022.

2) The Plaintiff has filed Regular Civil Suit No. 86 of 2022 seeking a decree for recovery of possession and injunction. Plaintiff's case was that he was allotted the suit property bearing Gat No. 289/2 admeasuring 7.8 Ares in which Defendant had encroached. The Defendant, on the contrary took a stand that he was allotted portion of

the suit land by the Gram Panchayat. However, during the course of trial, the Defendant could not produce any evidence on record to show allotment of part of the suit land to him. Though a Certificate issued by the Gram Panchayat was sought to be produced on record, no evidence was led to prove the said document. In that view of the matter, the Trial Court proceeded to hold the Plaintiff as the owner of the suit property. The said finding of the Trial Court has attained finality on account of Appellant's failure to challenge the same. The Trial Court thereafter proceeded to dismiss the suit by recording a finding that it was not possible to ascertain the exact location of the suit property. In my view, once the Plaintiff's claim of ownership was upheld and the Defendant's claim of ownership was rejected, the issue of ascertainment of location of suit property was clearly irrelevant. Admittedly, the Appellant does not own any other property in the vicinity. His claim for ownership of part of the suit property has already been rejected. Therefore, the entire exercise of locating the suit property carried out by the Trial Court was clearly unnecessary. The first Appellate Court has rightly corrected the error committed by the Trial Court. No serious error can be traced in the order passed by the first Appellate Court. No substantial question of law is involved in the Appeal. Appeal is accordingly **rejected**.

3) With rejection of Appeal, Interim Application taken out for stay does not survive. The same also stands disposed of.

SANDEEP V. MARNE, J.