



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**909 SECOND APPEAL (STAMP) NO. 28417 OF 2015**

THE CENTRAL GOVT. OF INDIA, PUNE CANTONMENT, PUNE AND  
ANOTHER  
VERSUS  
SHAIKH MOHAMMAD IBRAHIM ISMAIL AND ANOTHER

...

Advocate for Appellants : Mr. Rajendra D. Sanap  
Advocate for Respondents : Mr. Deshmukh Himmatsinh D.

**CORAM : SHAILESH P BRAHME, J.**

**DATE : 14.11.2025**

**PER COURT :**

Heard both sides.

2. Against concurrent findings, the appellants/original defendants have preferred this appeal.

3. Respondent no. 1 had filed Regular Civil Suit No. 169/1996 for declaration and mandatory injunction. It is contended that he is the owner of house property No. 716 from Survey no. 117 and 118 measuring 5400 square feet. It was originally belonging to Mir Umrao Ali. It was mortgaged with Mr. Alexander on 13.09.1897. In the decree passed in Regular Civil Suit No. 575/1901 the suit property was auctioned and it was purchased by one Waman Tambat. Mr. Tambat sold it to vendor of respondent no. 1 Akbarsaheb. From Akbarsaheb it was purchased by respondent no. 1 on 07.11.1908. It is further contended that in the record of right, the area of only 1634 square feet was shown and the defendants refused to rectify the mistake, which was cause of action to file the suit.

4. The suit is contested by the appellants mainly on the pleas that

plaintiff was the encroacher and he was entitled to have only 1634 square feet. The remaining area was an encroachment. Another plea was that the plaintiff admitted that he was entitled to 1634 square feet while converting the plot and by payment of conversion amount.

5. The plaintiff adduced oral as well as documentary evidence. The appellants/defendants failed to adduce any oral evidence despite extending adequate opportunity.

6. The Trial Court decreed the suit on 29.10.2001. Considering the evidence on record the decree is confirmed in Regular Civil Appeal No. 272/2005.

7. The learned counsel for the appellants submits that there are substantial questions of law in the appeal. It is further submitted that both Courts below committed error of jurisdiction. The findings recorded by both courts below are patently illegal. It is further submitted that the plaintiff is unable to show that he is owner of 5400 square feet. It is submitted that in fact he had admitted his interest of 1634 square feet only. The learned counsel prays to admit the appeal by framing substantial questions of law.

8. The learned counsel Mr. Deshmukh has repealed the submissions. It is submitted that concurrent findings of facts cannot be interfered with as no case is made out.

9. I have considered the rival submissions of the parties. The appellants did not lead oral evidence, therefore adverse inference needs to be drawn by relying on the judgment of the Supreme Court in the matter of **Vidyadhar vs. Manikrao and Another; AIR 1999 SC 1441**. Both Courts below have recorded findings against the appellants, which cannot be faulted and said to be perverse.

10. Considering the oral evidence led by the plaintiff as well as

documentary evidence taken into account by both the Courts below, the findings are plausible and reasonable. I do not find any substantial question of law.

11. The Second Appeal is dismissed.

**( SHAILESH P. BRAHME, J.)**

mkd/-