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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 363 OF 2015

WITH

INTERIM APPLICATION ST NO. 3496 OF 2025

IN

SECOND APPEAL NO. 363 OF 2015

Vasant Maruti Palkar

.....Appellant

Vs.

Janaba Dattu Palkar and anr

.....Respondents

Mr. Mukesh J. Parbari for the appellant

CORAM : GAURI GODSE, J.

DATE : 21st FEBRUARY 2025

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ORDER:

1. Heard learned counsel for the appellant. This appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing the suit for injunction and for possession after removal of encroachment.

2. Learned counsel for the appellant submits that the first Appellate Court has erroneously disbelieved the plaintiff's case on the ground that name of Krishna was suppressed by the plaintiffs who was brother of Santu and Dattu. Learned counsel for the appellant submits that the

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original holder of the family property was Vithoba, who had only two sons Santu and Dattu. He submits that as per the partition between the family, the suit property, i.e. house on the eastern side was given to the share of plaintiff's grandfather i.e. Santu, Western side property was given to the share of Dattu, i.e. defendant's father. He submits that the first Appellate Court has erroneously referred to the name of Krishna, when there was nothing on record to indicate that Krishna was concerned with the suit property or was concerned with family of plaintiff and defendant no. 1. He, therefore, submits that the second appeal would require consideration on the ground that the pleadings and evidence are incorrectly appreciated by both the Courts.

3. I have perused the papers of the second appeal. The suit is filed with regard to Gram Panchayat House No. 83/2. The division of the property and the house property given to the share of plaintiff's grandfather is pleaded by the plaintiff. It is plaintiff's contention that western side of the property which was given to the share of Dattu i.e. defendant's predecessor-in-title was Gram Panchayat House No. 83/1. The plaintiff, thus, submitted that while constructing the house on the property of defendant no. 1's share, encroachment was carried out to the extent of 5.22 feet as shown in the suit map and the encroachment

was on the plaintiff's property i.e. Gram Panchayat House No. 83/2. Both the Courts have exhaustively dealt with all the evidence on record and disbelieved the plaintiff's plea of title on the suit property. The defendants relied upon the assessment extracts with regard to their house property i.e. Gram Panchayat House No. 83/1. Thus, on perusal of the Gram Panchayat Resolution and Map at Exhibit 39, the appellate Court held that defendant no. 1 had made new construction towards western side of Gram Panchayat House No. 83/1.

4. With regard to the encroachment, the plaintiff's pleading is not accepted for want of any supporting evidence. In the map on record drawn by the surveyor and produced at Exhibit 39, defendant no. 1's construction is accepted based on the Gram Panchayat resolution dated 13th February 1999 produced on record at Exhibit 91. The first Appellate Court has recorded findings disbelieving the plaintiff's contention that there is encroachment on Gram Panchayat House No. 83/2. The evidence of surveyor is examined by the first Appellate Court. Based on the evidence on record, the first Appellate Court held that the encroachment as pleaded by the plaintiff is not proved based on the surveyor's map. As against the plaintiff's pleadings and the evidence relied upon by the plaintiff, defence of defendant no. 1 that

he has carried out construction on Gram Panchayat House No. 83/1 is accepted.

5. The grounds argued on behalf of the appellant regarding reference to Krishna being part of the family would not be relevant in view of the concurrent findings of facts recorded on the construction of defendant no. 1 existing on Gram Panchayat House No. 83/1. The plaintiff admittedly did not produce any documentary evidence to support his case of ownership of the suit property and the alleged encroachment. Thus, in view of the concurrent findings of facts recorded by both the Courts, the second appeal would not require any consideration by this Court.

6. I do not find any illegality or perversity in the reasons recorded by both the Courts.

7. The second appeal does not raise any question of law. Hence, the second appeal is dismissed.

8. In view of dismissal of the second appeal Interim Application St No. 3496 of 2025.

[GAURI GODSE, J.]