

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

SECOND APPEAL NO.164 OF 2019

Jaywant Dattajirao Gaikwad since
deceased through legal heirs
1A) Mrs. Madhumalati Jaywant
Gaikwad and Ors.

...Appellants

Versus

Vijaysingh Ramrao Gaikwad and
Ors.

...Respondents

....

Mr. Nikhil Wadikar with Ms Komal Bhoir i/b. Mr. Nandu Vishnu Pawar for
the Appellants.

Mr. Rushikesh Chandrashekhar Barge for Respondent Nos.1 and 2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 28th FEBRUARY, 2022.

P.C.:-

1. This appeal assails the judgment dated 27/04/2018 whereby learned District Judge, Satara has dismissed the Regular Civil Appeal No.180 of 2013 and confirmed the judgment dated 22/5/2013 passed by the learned Jt. C.J.J.D., Satara, dismissing the Regular Civil Suit No.446 of 2000.

2. Heard learned counsel for the Appellant and Respondents (hereinafter referred to as Plaintiff and Defendants).

3. The Plaintiff herein claims to be the owner in possession of the northern portion of the property under Gut No.922 admeasuring 31.5 R, situated at Chinchnervandan. The said property shall be hereinafter referred to as the 'suit property'. The property of the Respondents - Defendants is surveyed under Survey No.923/1 and is on the northern side of the suit property. It is the Case of the Plaintiff that Defendants have constructed a compound wall and has thus encroached in his property to the extent of 208 ft. The Plaintiff therefore filed a suit for possession and mandatory injunction for removal of the said encroachment, more particularly described in paragraph 1 (b) of the plaint.

4. The Respondents-Defendants denied having encroached in the aforesaid property and claimed that the suit property is at a higher lever as compared to the property under Section 923/1. Their ancestors had constructed a 'Bandh' (embankment) on the southern side of the their property and has laid pipe line on the said bandh and planted several trees on the eastern side of the said Bandh. The Defendants claim that the said 'bandh' is in their property and in their possession since the time of their forefathers.

5. The trial court on appreciation of evidence held that the Plaintiff has failed to prove that the Respondents -Defendants have encroached in the suit property and hence dismissed the suit. The appeal filed before the Ad-hoc District Judge-2, Satara, also came to be dismissed. Hence this second appeal.

6. Heard learned counsel for the respective parties. Perused the records.

7. The records indicate that the suit property under Gut No.922 is owned and possessed by the Plaintiff whereas property under Gut No.923/1 is suit land at the northern side of the suit property is owned and possessed by the Defendants. The Plaintiff has claimed that the Defendants have encroached in the suit property to the extent of 108 ft. by constructing compound wall. The Plaintiff sought to prove the encroachment by relying upon the evidence of PW2-Ratnaprabha Shinde, a surveyor in the office of TILR, Satara. She claims that she took measurements of Gut No.922 and prepared a plan (Exhibit-75), showing the boundaries of the suit property as shown by the respective parties and as per the survey records. She claims that the Defendants have encroached in the suit property but has admitted that she has not shown

the extent of encroachment in the plan at Exhibit-75. She has admitted that the property under Survey Nos. 922 and 923/1 were originally surveyed under Survey No. 108. She has admitted that she has not identified the property on the basis of Division map and that she has not shown permanent structures and boundary marks in the plan at Exhibit-75. She has not taken measurements of the entire survey No.108(old) She has not taken joint measurement but has identified only the property under Survey No.922. She has admittedly not followed the proper procedure, instructions and guidelines. The accuracy of the plan at Exhibit-75 is in doubt and in the absence of proof of such accuracy cannot be relied upon. The Trial Court has extensively considered the evidence of PW2 and has observed that the plan is not accurate. The findings, which are based on the evidence cannot be construed as perverse. Having gone through the records, in my considered view no substantial question is raised. Hence, the appeal has not merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)