

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

**SECOND APPEAL NO.773 OF 2015
WITH
CIVIL APPLICATION NO.1649 OF 2015**

Shri Mukund Govind Nimankar @ Nimbalkar ... Appellant

V/s.

Smt. Subhadra Kashiram Mahadik ... Respondent

Mr.S.S. Redekar for the Appellant.

**CORAM : A.M.DHAVAL, J.
DATE : 10th OCTOBER, 2018.**

P.C.:

. Heard learned counsel for the appellant. The Trial Court has decreed the suit and granted decree of eviction and perpetual injunction against the encroacher. The First Appellate Court has reversed the said judgment and decree on following grounds:

- i) The appellant is only one of the co-owners and all other co-owners are not joined as parties.
- ii) The description of the suit property and the map of encroachment as per Order 7 Rule 3 was not filed.
- iii) The encroachment shown in the map is not proved to be of 20/5/2000 and the suit was bad for non joinder of necessary parties.

2. After hearing the learned Advocates, the appeal is admitted on following substantial questions of law:

- i) Whether the First Appellate Court erred in holding that the

suit was bad for non joinder of necessary parties and the plaintiff alone has no right to file the suit for removal of encroachment and claim injunction ?

ii) Whether the First Appellate Court erred in reversing the findings of the Trial Court on the ground that description of the suit property was not proper and the encroachment area and the date of encroachment were not proved ?

iii) Whether the learned First Appellate Court has followed legally accepted principles of law in reversing the judgment and decree of the Trial Court ?

iv) What order ?

3. Issue notice to the Respondent in the Civil Application returnable on 19/11/2018. Till the next date the respondent is restrained from carrying out any construction on the Suit property.

(A.M.DHAVAL, J.)