

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

SECOND APPEAL NO. 500 OF 2011

Sanjay @ Sanjivan s/o Acchutrao Raut
& Ors. **APPELLANTS**

V E R S U S

Ashruba s/o Bajirao Khanve
& Ors. **RESPONDENTS**

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Mr. A.P.Bhandari, Advocate for Appellants.

Mr. V.V.Bhavthankar, Advocate for R.Nos. 1 to 3.

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CORAM : T.V.NALAWADE, J.

DATE : 23rd SEPTEMBER, 2015

ORDER :-

1. The Appeal is filed to challenge the Judgment and Decree of R.C.A. No. 61/2005 which was pending before the Ad-hoc District Judge – 1, Majalgaon.

2. Heard both sides.

3. Present appellant had filed R.C.S. No. 161/2001 in the Court of the Civil Judge [Jr.Division] at Majalgaon for removal of encroachment, for possession of encroached portion and mesne profit. The Suit was

decided in favour of the plaintiff and decree was given for possession of 20 gunthas land as against defendant Nos. 1 and 2 and the decree of possession of 5 gunthas as against defendant No. 3. First appellate court has set aside the Judgment and decree of the trial court holding that the measurement done by the Cadestral Surveyor is not binding on the defendants.

4. It appears that in the past also, learned counsel for the appellant/plaintiff had made submissions before the other Hon'ble Judge that the plaintiff is ready to bear the expenses of fresh measurement and for putting end to the dispute, fresh measurement be done and the dispute be resolved. Today also similar prayer is made.

5. Reasonings given show that when Cadestral Surveyor made measurement, on the basis of which decree was given by the trial Court. Only because the measurement was not made properly, as observed by the first appellate court, the decree is set aside. In view of the circumstances, this court holds that liberty needs to be given to the plaintiff to get the land measured again at his costs. For that the decision given by the first appellate court needs to be set aside and the First Appeal needs to be restored.

6. In the result, Second Appeal is allowed.

The Judgment and decree passed by the first appellate Court is set aside and the matter is remanded

back to the District Court, Majalgaon.

The District Court is to give liberty to the plaintiff to take fresh measurement at his own costs. Such steps needs to be taken by the appellant in the First Appeal prior to 23/10/2015. If steps are not taken, there will be liberty to the first appellate court to decide the matter again on the basis of whatever material is available. If fresh measurement is taken, evidence is to be recorded only in respect of the fresh measurement and on that basis the matter is to be decided by the first appellate court.

The parties to appear before the first appellate Court on 12/10/2015.

Send the record and proceedings to the first appellate court.

[T.V.NALAWADE, J.]