

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.542 OF 2010

Dhananjay Dattatraya Patil

Appellant

V E R S U S

Shivaji Sadashiv Chapane

Respondents

Mr.V.D.Salunke, Advocate for the appellant.
Smt.M.A.Kulkarni, Advocate for the respondent.

CORAM : A. V. NIRGUDE, J.
DATE : 20th July, 2015

PER COURT :

1. The second appeal is mainly challenging the judgment and order passed by the learned Lower Appellate Court dismissing the appellant's suit for removal of encroachment. According to the appellant/plaintiff he purchased a plot of land in Survey No. 236 of village Osmanabad. The reason for acquiring this piece of land was obviously for development on the basis of non-agricultural use. Soon after the purchase of the piece of the land, the appellant/plaintiff obtained permission from the Collector to use the land for non-agricultural purpose.

2. Thereafter the appellant/plaintiff sold some small pieces of this land to various persons including the respondents. The area came in the city limits of the Municipal Council, Osmanabad. This area was also subjected to city survey. Structures that were erected in this plot of land, were then shown as in city survey maps. Certain numbers were given to the such structures. The respondents' names are mentioned as owners of such city survey numbers.

3. It is after this development the appellant/plaintiff thought it necessary to take measurement of his plot once again to find out whether any land belonging to him had remained unsold. According to him. a stip of land admeasuring 15 x 100 fts would be still available to him. At his request the T.I.L.R. took measurement of his portion of land from survey no. 236. A map showing the result of measurements is produced on record. T.I.L.R. opined that a piece of land admeasuring 15 x 10 belonging to the appellant/plaintiff is encroached by the respondents.

4. Apparently this map was drawn after taking measurements only in presence of the appellant/plaintiff. The respondents were not given notice. The measurements thus was one sided affair. The respondents on one hand challenged the correctness of this map by filing appeal before appropriate Forum

and on the other hand, the appellant/plaintiff too filed this suit for recovery of possession of the encroached area of his land.

5. In order to substantiate his claim he placed reliance on the findings recorded in the measurement report as well as the map. The learned Judge of the Lower Appellate Court rejected the map as piece of evidence to prove the allegations of encroachment. Various reasons were mentioned in the judgment as to why he would not assume even accuracy of this map. As said above this map was prepared for a purpose which was then not disclosed to other parties who were likely to be affected by the findings.

6. When the appeal was heard earlier I thought that the appellant would pursue the proceedings before the Land Record Officer and would get the lands remeasured. This was unfortunately was not done so far. As per the order of the Appellate Forum no new measurements were taken.

7. In view of this, no substantial question of law arises from observations & finding recorded by the Lower Appellate Court. The appeal would therefore fail and disposed of accordingly.

8. However, the appellant/plaintiff has still some hope re-measurement of the land would take place

in presence of affected parties. It is only then, the appellant would have a fresh cause of action, if encroachment is noticed. confirmed with such liberty. The Second Appeal stands disposed of.

(A. V. NIRGUDE, J.)

VishalK