

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

22. SA/505/2011

HAMID AKBAR SHAIKH AND ANR
V/S
ABA NARAYAN SHEGDE AND ANR

Mr. V.D. Hon, Senior Counsel for appellant.

Mr. V.P. Latange, Advocate for respondent Nos. 1 and 2.

CORAM : T.V. NALAWADE, J.
DATED : 14th September, 2015.

ORDER :

1. During arguments, both the sides submitted that they do not want to continue the dispute, but it is desirable to ascertain that there is really encroachment made. The learned counsel for appellant/plaintiff submitted that matter may be remanded back and plaintiff is ready to spend for fresh measurement and that can be done in District Court where the evidence on fresh measurement can be given and District Court can decide the matter as afresh.

2. It appears that in the year 1955, original defendant purchased the two properties like entire Survey No. 225/1, admeasuring 6 Acres 36 Gunta and 1/5th portion of Survey No. 226/2. Area of Survey No. 226/2 was 5 Acres 26 Gunta. It appears that in subsequent sale deed of 1957, the plaintiff

purchased 4/5th share of Survey No. 226/2. The learned counsel for defendant/respondent submitted that the portions purchased by the defendant from aforesaid two numbers were adjacent to each other and under the sale deed, he got title in respect of area shown to be sold under the sale deed as it was the sale deed first in time.

3. The learned counsel for present appellant/plaintiff submitted that the Courts below have held that the remaining portion i.e. 4/5th portion of Survey No. 226/2 is purchased by plaintiff and so, plaintiff is entitled to get that much portion. He submitted that the record is created during consolidation and that record has presumptive value. He submitted that there is possibility of mistake committed by the surveyor in mentioning that the defendant has 1 Hecter portion in survey No. 226/2 when only 1/5th share was purchased by the defendant and that cannot be 1 Hecter area.

4. It appears that in the past, measurements were not taken together of old Survey Nos. 225/1 and 226/2 (New Gat Nos. 167 and 168). No third party is involved and so, if these two survey numbers are measured or the 2 Gat numbers are measured in relation to old record of survey numbers, it can be

ascertained as to whether defendant is in possession of more area than the area purchased by him under the sale deed of 1955.

5. To find out that, this appeal is allowed. The judgment and order of the first appellate Court delivered in Regular Civil Appeal No. 137/2006 is hereby set aside and the matter is remanded back to the District Court. The District Court is to appoint the Court Commissioner for taking measurement in the manner observed above and the measurement is to be done at the cost of original plaintiff. The surveyor is to ascertain as to whether the area which ought to have been shown in one gat number is shown in other. In those terms the appeal is allowed and disposed of. The parties are to appear in the District Court on 9.10.2015. Record be sent to the District Court. The appellate Court is to see that the measurement and appeal are expedited.

[T.V. NALAWADE, J.]

ssc/