

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

**Appeal from Order No.59 of 2013
With
Civil Application No.2210 of 2013**

Nanasaheb S/o Dajiba Suryawanshi
And Others.

.. Appellants.

Versus

Goroba s/o Ramu Suryawanshi
And Another.

.. Respondents.

Shri. S.N. Rodge, Advocate, holding for Shri. S.A. Ambad,
Advocate, for appellants.

Shri. B.N. Patil, Advocate, for respondent Nos.1 and 2.

CORAM: T.V. NALAWADE, J.

DATE : 12th AUGUST 2015

ORDER:

1) The appeal is filed against the judgment and decree of Regular Civil Appeal No.205/2005 which was pending in the Court of the District Judge-1 Latur. The Appellate Court has allowed the appeal filed by the original plaintiffs against the judgment and decree of Regular Civil Suit No.540/2002 which was pending in the

Court of the Civil Judge, Senior Division, Latur. The suit was filed for removal of encroachment and possession of encroached portion by the present respondents, plaintiffs. Heard learned counsel for the appellants.

2) It is the case of the plaintiffs that they are owner of land Gat No.170. Defendants are owners of adjoining lands like Gat Nos.171 and 172. It is the case of the plaintiffs that defendants have made encroachment over their land from their side. The defendants filed written statement and they admitted the title of the plaintiff in respect of land Gat No.170. The defendants have disputed the record created during implementation of consolidation scheme and they have contended that they have had filed appeal before Deputy Director of Land Records.

3) At present it can be said that the record is in favour of the plaintiffs and the title of the plaintiffs was not disputed by the defendants in respect of area of land Gat No.170. The record has presumptive value. The finding given by the trial Court that the plaintiffs have

failed to prove their title shows that there was non application of mind and this circumstance is considered by the appellate Court. It appears that the defendants denied that measurement was made in their presence and the plaintiffs could not prove that notice was served on the defendants. As this procedure is mandatory, the appellate Court has observed that opportunity needs to be given to the plaintiffs to take decision on merits, after taking the measurement through Taluka Inspector of Land records, the Court Commissioner who can be appointed by the trial Court. This Court sees no reason to interfere in the decision given by the Appellate Court.

4) In the result, the appeal stands dismissed. Civil Application stands disposed of. Interim relief stands vacated.

Sd/-
(T.V. NALAWADE, J.)

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