

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram,	Court's or Judge's orders.
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SECOND APPEAL NO. 456 OF 2015
WITH CA/7382/2015 IN SA/456/2015

SAHEBRAO RAMBHAU KALE
VERSUS
JAGANNATH DAGDUE TAMBE AND OTHERS

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Advocate for Appellant : Mr. Karpe Rahul R.
AGP for Respondent Nos.1 and 2: Mr. H. D. Deshmukh.

CORAM: T. V. NALAWADE, J.
DATED: 29th SEPTEMBER, 2015.

PER COURT:

1. The appeal is filed to challenge the judgment and decree of Special Civil Suit No.245 of 2003 which was pending in the Court of Civil Judge, Senior Division, Newasa, District Ahmednagar and also against the judgment and order of Regular Civil Appeal No.57 of 2014 which was pending in the District Court, Newasa, District Ahmednagar (Old No.17 of 2006). Both the sides are heard.
2. The suit was filed by present Respondent for relief

of direction for taking measurement of the entire portion of land Gat No.411 situated at village Telkudgaon Tahsil Newasa and also for fixing the boundary marks in respect of land Gat No.411/1 and Gat No.411/2. The suit was also filed for relief of permanent injunction against the present Appellant, defendant.

3. Both the sides gave evidence. On the basis of oral evidence and the revenue record, the trial Court has held that there is some dispute and the dispute can be resolved by directing the Survey Department to take measurement as prayed by the plaintiff. Relief of injunction is also given in favour of the plaintiff.

4. It is the grievance of the present Appellant, original defendant that even when his Advocate was not ready to argue the matter, the appeal was decided on merits and it came to be dismissed. In view of this submission, the learned counsel for the Appellant was allowed to argue in second appeal to make out some case.

5. The submissions made by the learned counsel for the original defendant show that the defendant has apprehension that after taking measurement if the boundary marks are fixed by Survey Department and

some marks are shown inside of the portion of Gat No.411/1, by mis-using those marks, the plaintiff may contend that he is in actual possession of the portion covered up to those marks and that way the plaintiff may take possession when the suit was not filed for possession. The learned counsel submitted that the pleadings in the plaint themselves show that the plaintiff had the feeling that there was some encroachment but instead of claiming the relief of possession of the so called encroached portion, the reliefs of aforesaid nature were claimed and the plaintiff is likely to misuse the aforesaid decree.

6. This Court is making it clear that if, after ascertaining boundaries and fixing the boundary marks, it transpires that the defendant is in possession of some portion of land Gat No.411/2, then this circumstance cannot help the plaintiff to say that he has been in possession of that portion also. In that case, the relief of possession in respect of such portion will have to be sought and it will be necessary for the plaintiff to go to the Civil Court again for recovery of possession of the so called encroached portion. After making these things

clear, this Court holds that there should not be grievance to the defendant about the nature of reliefs given in favour of the plaintiff, respondent. The decree is to be read accordingly. In those terms, the appeal is disposed of.

7. In view of final disposal of the second appeal itself, the civil application for stay does not survive and the same stand disposed of accordingly.

[T. V. NALAWADE, J.]

Dt.29/09/2015
ans/456