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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 218 OF 2010
WITH
CIVIL APPLICATION NO. 640 OF 2010**

Shri Bapu Babu Shedge
[Since deceased through his legal heirs :

(A) Smt. Sulochana Bapuso Shedge,
Since deceased through her legal heirs :
(B) Shri. Raj Bapuso Shedge and Ors. ... Appellants

Versus

Smt. Laxmibai Manohar Lokhande,
Since deceased through her legal heirs :
(A) Sau. Kamal Rajaram Mithare and Ors. ... Respondents

Mr. A.V. Anturkar, Sr. Counsel along with Mr. Sandeep Phatak i/by Mr. S.B. Deshmukh for the appellants.

Mr. S.R. Ganbavale along with Mr. Sangramsingh Yadav for respondents.

**CORAM : Smt. R.P.SondurBaldota, J.
DATED : February 05, 2015**

P.C.

The original appellant was the defendant to Regular Civil Suit No.112 of 1978 filed by one Laxmibai Lokhande for possession of portion of the land admeasuring 20 R allegedly encroached upon by him and for the mesne profits. The respondents are legal heirs and representatives of Laxmibai Lokhande, the original plaintiff who had died during the pendency of the suit. The appellant died during pendency of the present appeal and his

heirs have been brought on record.

2. The trial court by its judgment and decree dated 4th March, 1996 had dismissed the suit. Being aggrieved by the order of dismissal, the respondents herein preferred Regular Civil Appeal No. 185 of 1996 before the District Court, Satara. That appeal was allowed by the District Court by its judgment and order dated 8th February, 2010. The Lower appellate court set aside the decree of dismissal of the trial court and decreed the suit and directed the original appellant to hand over possession of the suit premises to the respondents within three months and further directed an enquiry into the future mesne profits under Order 20 rule 12A of Code of Civil procedure.

3. The case of the respondents in the suit was that Laxmibai was the owner of the land at survey no.993/5 and 993/6 admeasuring 71 Ares and 61 Ares respectively and the original appellant herein was the owner of survey No. 993/2, 993/3 and 993/4 admesuring 75 Ares, 67 Ares and 63 Ares respectively. The suit land and the appellant's lands are abutting each other. The lands of the appellants are situated towards the West of the suit property. It is contended that the original appellant while levelling his land by bulldozer encroached upon land admesuring 20 R out of the suit land. During the pendency of the suit, Court Commissioner came to be appointed for taking measurements of the suit land and lands of the appellant. Pursuant to the

order, the lands were measured by the Taluka Inspector of Land Records (T.I.L.R.). The measurement showed encroachment by the original appellant as alleged by Laxmibai. It appears that the original appellant was not satisfied with the work of measurement undertaken by the T.I.L.R. He therefore, made an application for supernimtana and the lands came to be again measured by Surveyor, an officer superior to T.I.L.R. The report of the measurements taken the surveyor (Ex. 77) indicated that there was no encroachment by the appellant. The trial court accepted the survey and the report made by the surveyor for the sole reason that he was an officer superior to T.I.L.R. It felt that the survey made by him and his report should be accepted as proper and the same should be preferred to the report of the T.I.L.R. The appellate court in the impugned judgment and order held that merely because the map at Exh. 77 was drawn by the Surveyor, the same need not be and can not be preferred to the map at Exh. 70 drawn by the T.I.L.R. The consideration relevant for preferring the document of measurement would not be the position held by the officer but the manner in which the measurements were carried out.

4. The appellate court found that the surveyor who was examined by the appellant stated in his evidence that the boundary marks of the lands shown at Exh. 77 are the old boundary marks shown in North East Corner and they are shown as per vahivat. He was unable to show the boundaries

of the survey No. 993. He was also unable to state whether his survey map is correct as per the entries in the tippan book. He could not state the total area of that survey number as also the length and width of Hissa no. 5 and 6 as per his map at Exh. 77. He was unable to state the actual area of bandh which is in existence in the land of the parties. The witness admitted in his cross examination that as per plain table method, it was necessary to mark boundaries as per vahivat. He further admitted that he had not personally carried out the work of measurement. One Mr. Babar was directed by him to take measurements of the suit property as per the order of the Court. Thus, the actual measurements were taken by Shri. Babar. The evidence also showed that the surveyor was completely unaware of the basic point of Phalani of pot hissa numbers of survey No.993. As a consequence, the report of the surveyor at Exh. 77 was discarded by the Appellate Court following the proper procedure.

5. T.I.L.R. stated in his evidence that during the course of demarcation of boundary of the land of the parties he had marked the area of encroachment by red colour at Exh.70. He had taken measurements personally by visiting the site. The Appellate Court, observed that there is no provision in Law that requires that the report of the superior Officer is binding on the court as against the report of the inferior officer of the same department. By applying the requisite test, the Court found that the map

drawn by the surveyor at Exh. 77 can not be accepted.

6. There can be no infirmity whatsoever with the view taken by the Lower Appellate Court. Merely because one of the officers taking survey is senior to the other, his report does not become binding. The report is required to be tested on the manner in which the measurements are taken and the map is drawn etc. By applying these tests, the map at Exh. 77 has been correctly rejected by the Lower Appellate Court. Next the finding challenged by the appellant is a finding of fact. There is no substantial question of law arising for consideration of the court. Hence, the appeal is dismissed.

7. Mr.Anturkar, leaned counsel for the appellant requests for continuation of the ad interim relief of stay of the impugned judgment and order. In the facts of the case, the request is refused.

8. In view of the dismissal of the appeal, Civil Application No. 640 of 2010 does not survive and the same is disposed of accordingly.

(SMT R.P. SondurBaldota,J.)