

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.268 OF 1989

Sharadchandra Balkrishna Baware
since deceased through heirs & legal
representatives

.. Appellants.

V/s

Chandrakant Appa Satkar and ors.

.. Respondents.

S.M. Mhamane a/w V.P. Patankar, for the Appellants.
V.B. Rajure, for the Respondents.

**CORAM : RAVI K. DESHPANDE, J.
DATED : 17th JULY, 2015**

P.C.

1. The appellant is the original plaintiff who had filed Civil Suit No.62 of 1978 for a declaration and possession that he is the owner of the owner of the suit property and the defendants be directed to deliver the vacant possession of the suit property to the plaintiff, free from the encumbrances. The relief of mesne profit was also claimed. The Trial Court passed a decree in the suit in favour of the plaintiff. Whereas the Lower Appellate Court reversed the said decree by

allowing the appeal. Hence, this is the Second Appeal by the plaintiff.

2. On 11th April, 2014, this Court passed the order as under :-

“1. Heard Mr. V.P. Patankar learned counsel for the Appellants and Mr. V.B. Rajure learned counsel for the Respondents.

2. Learned counsel appearing for the parties state that the property in dispute is land admeasuring 8 acres and 30 gunthas. The parties have agreed that the Respondents will retain 3 acres of land and the Appellants will retain 5 acres and 30 gunthas. They have further agreed that the parties will sell this property and will appropriate the sale proceeds in that proportion. The learned counsel therefore, pray that the matter may be adjourned for a period of eight weeks for the parties to find out suitable

purchaser. Mr. Patankar submits that the statement made by him is on the basis of instructions of Appellant No.3-Vijay B. Davare on behalf of the Appellants and who is present in the Court. Mr. Rajure submits that the statement made by him is on the basis of instructions of respondent No.1-Chandrakant A. Satkar who is present in the Court. The statements made by the learned counsel are record.

3. By consent of the parties matter is adjourned to 7.7.2014.”

3. In view of the aforesaid order, the learned counsel appearing for the parties submits that the parties have agreed that out 8 acres and 30 gunthas, 5 acres and 30 gunthas shall be retained by the appellants/plaintiffs, whereas 3 acres land shall be retained by the respondents. This statement is therefore, accepted and shall be treated as a decree passed by this Court.

4. The parties have tried to adopt the process for demarcating the properties in accordance with the agreed terms and also to sell the properties, if it is not possible to provide access to the land falling to the share of the appellants. This Court has therefore, passed the order dated 8th June, 2015 as under :-

“Put up this matter by consent of the parties on 6th July, 2015.

In the meantime, the parties are at liberty to file the Consent Terms, failing which this Court shall directing Executing Court to execute the decree by sale of the property, as per the order passed by this Court on 11th April, 2014.”

5. It appears that till this date, the parties have not arrived at any settlement on this aspect of the matter. In view

of this, the parties are at liberty to file the execution proceedings to get the decree passed by this Court executed. The Executing Court can appoint the Court Commissioner, either a private party or technical expert, as is permissible in law to get the property measured and the shares demarcated in accordance with the agreed terms. The parties shall also be at liberty to approach Tahsildar to find out a way, the approach way to the property of the appellants and if it is found that such a course is not possible, then the Executing Court shall take the steps to put the property in auction and parties shall have no option for that. The parties are at liberty to participate in the proceedings of auction of the property. Upon sell of the property, the Executing Court shall determine the respective monetary shares of the parties arising out of the such sell. With this, the Second Appeal stands disposed off.

6. The decree passed by the Trial Court as well as Lower Appellate Court is set aside and stands substituted by the

decree passed by this Court.

7. No order as to costs.

(RAVI K. DESHPANDE, J.)