

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.470 of 2012

Shri Appasaheb Anna Savale,
since deceased, through his
LRs. Shri Basappa Appasaheb
Savale and others

... Appellants

Versus

Shri Dhondiram Murgyappa Karale
and others

... Respondents

Shri S.S. Patwardhan, Advocate for Appellants.
Shri S.G. Deshmukh, Advocate i/b Shri A.J. Kandarkar,
Advocate for Respondents.

Coram : R.K. Deshpande, J.
Dated : 10th June, 2015

P.C.:

The Trial Court passed a decree in favour of the plaintiffs directing the defendants to deliver the possession of the encroached portion admeasuring 8 R of land mentioned in para 1C of the plaint. The Trial Court decreed the suit on the basis of the report submitted by the Surveyor, who was examined and cross-examined. The Appellate Court has reversed the decree passed by the Trial Court. The Appellate Court has discussed the evidence of the Surveyor along with the report and has held that there are so many drawbacks in the measurement by the Surveyor. The evidence of the Surveyor has been rejected by the Appellate Court and the decree passed by the Trial Court is set aside.

Shri Patwardhan, the learned counsel for the

appellants, has raised two points - (i) that there was no reason for the Appellate Court to reject the evidence of the Surveyor along with the report, which shows the encroachment over 8 R of land, and (ii) that in terms of Section 24 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, the certificate has been issued in respect of the land in question and the title, therefore, vests in the appellants/plaintiffs in respect of the portion of 8 R of land.

With the assistance of the learned counsels appearing for the parties, I have gone through the judgments and orders passed by the Courts below. The Appellate Court has recorded the findings on appreciation of the evidence and rejected the evidence of the Surveyor. It is a possible view of the matter, which does not call for interference. So far as the other point is concerned, the same is based upon the certificate under Section 24 of the said Act. It is an undisputed position that the predecessor-in-title of the appellant had made an application along with the defendant No.1 to the Consolidation Officer for correction of the record. Accordingly, 8 R of land was included in the land owned by the plaintiff,

In view of these factual aspects of the matter, I do not find that the second point urged by the learned counsel for the appellants remains a substantial question of law to be considered by this Court.

The second appeal is dismissed.

(R.K.DESHPANDE, J.)