

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.513 OF 2011
WITH
CIVIL APPLICATION (C.A.S.) NO.1249 OF 2011

(Raghunath Rakhama Kangne Vs. Pramod Jagannath Khairnar and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's orders.

*Shri Prasad S. Dani, Senior Advocate i/b V. Nirmal Gopal, Advocate
Appellant.*

Shri Sandip D. Shinde, Advocate for Respondents.

CORAM: R.K. DESHPANDE, J.

DATE: 29th JULY, 2015.

The Trial Court passed a decree in Regular Civil Suit No.76 of 2001 on 02.08.2004 granting declaration that the plaintiffs are the owners of the encroached portion of the suit land, which is found in possession of the defendant. The defendant is directed to handover the possession of 17 R. of land which is specifically shown in Grey colour in the map at Exhibit 68. The defendant is restrained from interfering with the peaceful possession and enjoyment of the land over the suit property. An enquiry into the mesne profit has also been directed to be maintained. Regular Civil Appeal No.47 of 2004 has been dismissed by the Lower Appellate Court on 06.07.2011. Hence, the original plaintiff before this Court against the concurrent finding of fact.

This Court on 22.07.2013 passed an order to explore the possibility of giving quietus to the issue either one way or the other and directed the District Inspector of Land Records to measure land Gat No.83/2 belonging to the plaintiffs and land Gat No.104/1 belonging to the defendant and as to whether there is an encroachment carried out in the land of the plaintiffs by the defendant and the extent of encroachment if it has been so encroached. Accordingly, the report of District Inspector of Land Records has been received. There is a dispute over this report, the plaintiffs submits that the report shows encroachment, whereas the defendant submits that there is no encroachment shown in this report. In such a situation, the report as submitted cannot be accepted and to send the matter back to the Trial Court or the Lower Appellate Court to permit the parties to examine and cross-examine the District Inspector of Land Records would amount to reopening the issue which is already concluded by the decision of both the Courts below.

The Courts below have relied upon the report of surveyor which was placed on the record of the Trial Court in respect of Survey No.83/2 belonging to the plaintiffs. The plaintiffs applied for measurement of the land Survey No.104 belonging to the defendants. It was opposed by the defendant and the application was rejected. In appeal the defendant applied for

measurement of his land which has been rejected by the Lower Appellate Court. The finding of fact recorded in respect of the encroachment on the basis of the report of surveyor accepted by the Courts below does not give rise any substantial question of law. The Second Appeal is dismissed.

In view of dismissal of the Second Appeal, Civil Application No.1249 of 2011 does not survive and it accordingly stands disposed of.

JUDGE