

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

SECOND APPEAL NO.58 OF 2011

Chandrakant Raghunath Mhatre .. Appellant
Vs.
Mahadeo Dadu Mhatre & Ors. .. Respondents

Mr.G.N. Salunkhe i/b. Mr.Y.M. Nakhwa, Advocate for the Appellant.
Mr.S.G. Karandikar, Advocate for Respondent Nos.1 to 9.

CORAM : RAVI K. DESHPANDE, J.

DATED : JUNE 24, 2015.

P.C. :

Heard the learned counsel appearing for the parties and by consent the following order is passed which shall be substituted in place of the orders passed by both the Courts below:

:: ORDER ::

(i) The respondent-defendant does not dispute the ownership of the plaintiff over Survey No.3 Hissa No.2 admeasuring 5 Gunthas situated at village Koproli, Taluka - Uran, District - Raigad. The learned counsel for the defendant further submits that the defendants have neither encroached upon the property owned by the plaintiff nor he intends to encroach upon the said property;

(ii) There is no finding by both the Courts below on the aspect of encroachment and the learned counsel appearing for the plaintiff also does not dispute that in fact there is no encroachment on the land owned by the plaintiff, but it was merely an apprehension of encroachment which has prompted filing of this suit;

(iii) The above statements made by the learned counsels in paragraphs (i) and (ii) are accepted;

(iv) In case, if there is any dispute regarding boundary of the land Survey No.3, Hissa No.2 admeasuring 5 Guntha of land then the parties are at liberty to get such dispute adjudicated in proper Court. In such an event, none of the findings recorded by the Courts below shall come in the way of the parties.

(RAVI K. DESHPANDE, J.)