

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Second Appeal No.248 of 2014
(Jayantilal Popatlal Rayachure .vs. Sudam Ramji Ghodmare @ Patil (D) through L.R.)

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

Court's or Judge's orders.

Mr.Rohit Joshi, Adv. for the appellant.
Mr.M.P.Khajanchi, Adv. for the respondent.

CORAM : A.P.BHANGALE, J.
DATE : 3.7.2015.

Heard.

By this Second Appeal, Judgment and Order dt.18.1.2014 passed in Regular Civil Appeal No.97 of 2003 by the District Judge-2, Chandrapur is in question. It appears that the learned 1st Appellate Judge was pleased to quash and set aside the Judgment and Order passed by the trial Court in Regular Civil Suit No.408 of 2000, dt.10.4.2003. The suit was in respect of encroachment allegedly made by the defendant. During pendency of this suit as an issue was raised that the defendant had encroached over the suit plot belonging to the plaintiff and the plaintiff is entitled to recover possession of the encroached portion from the defendant, a Court Commissioner was appointed in order to find out whether the defendant had really encroached upon the land belonging to the plaintiff. Accordingly, the Court Commissioner, who was none other than the Taluka Inspector of Land Records, Chandrapur by name Mr.Dhanraj Thakare,

measured the suit land and drew the map showing that owner of plot no.7 committed encroachment on plot no.8 to the extent of 533 sq. ft. and accordingly encroachment map is produced in the Court at Exh.152. Under these circumstances, it is submitted on behalf of the appellant that, in the operative portion of the order though decree in respect of encroached portion is passed whereby the defendant was directed to deliver possession of the encroached portion, as found in the map by the T.I.L.R., instead of 533 sq. ft. on plot no.8, 81 sq. mt. is mentioned therein which is apparently error on the part of the learned 1st Appellate Judge and instead, the defendant ought to have been directed to deliver possession of encroached portion to the extent of 533 sq. ft. on plot no.8 back to the plaintiff. Accordingly, modification is prayed for in clause no.3 of the 1st Appellate Court's order.

The defendant is accordingly directed to deliver possession of the encroached land on plot no.8 as shown in the map (Exh.152) to the extent of 533 sq. ft. to the plaintiff/respondent. Modification in the order be made accordingly. Rest of the portion of the decree to remain as it is. The appeal is, thus, partly allowed.

The record and proceedings be sent back to the 1st Appellate Court.

JUDGE

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