

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

Second Appeal No.412/2013
(Anusayabai Pandurang Bodade.vs. Sukhdeo Tukaram Anjankar and
another.)

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

Court's or Judge's orders.

Mr. S.A. Mohta, Advocate for Appellant.
Mr. A.B. Mirza, Advocate for Respondent no.1.

CORAM : A.V. Nirgude, J.
DATED : MAY 06, 2015.

Heard.

This appeal challenges concurrent findings of the Courts below that the respondent/plaintiff proved that the appellant/defendant made encroachment on his agricultural land. The respondent/plaintiff was under obligation to prove encroachment. He proved the same by examining Surveyor. Surveyor quite clearly deposed that he undertook the measurements and found that the appellant/defendant had made encroachment to the extent of 2 ½ acres. Unfortunately the appellant/defendant made no efforts to cross-examine this witness. Even at first appeal stage, no request was made to the Court for remand of the case.

The learned counsel for the appellant still insisted that the appeal should be admitted for deciding a substantial question of law i.e. as to whether the Surveyor erred in not taking measurements of both the lands in question? For deciding the issue of encroachment, he suggested that in the examination-in-

chief the Surveyor did not mention that he took measurements of appellant/defendant's land. I am afraid such issue would not arise because the Surveyor was not cross-examined. Whatever the Surveyor stated in the examination-in-chief, deserves to be accepted as truthful statements. When a Surveyor who is an independent witness and has technical knowledge in respect of measurements of the land, his finding cannot be discarded lightly. The learned counsel for the appellant is not able to even suggest that there was error at the time of measurements by the Surveyor because the deposition of the Surveyor had gone unchallenged on record.

The appeal does not give rise to any substantial question of law. Appeal stands dismissed. No costs.

JUDGE