

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 452 OF 2012

Buldhana Urban Coop. Credit Society Ltd. Buldhana Vs. Govind Tarachand Agrawal

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

Court's or Judge's Order

Shri R. L. Khapre Adv for appellant.
Shri M. R. Puranik Adv for respondent.

CORAM: A. S. CHANDURKAR J.

DATED: 09 JANUARY, 2015.

Heard. **Admit** on the following substantial
question of law:

Whether the decree passed by the first appellate
Court restraining the defendants from causing obstruction to
the possession of the plaintiff can be said to be an executable
decree in absence of specific measurements therein?

The learned counsel for the parties have been
heard. The appellant through its Chairman has filed affidavit
dated 06.12.2014 in which it is stated that the property
belonging to the appellant has been duly measured and any

construction on the said property would be undertaken in terms of sanction plan dated 28.01.2003. In said affidavit the exact boundaries along with their measurements have been mentioned. Copy of said affidavit has been duly served on the respondent who agrees through his learned counsel that the measurements mentioned therein are correct. In view of these undisputed facts, the decree passed by the first appellate Court can be suitably modified.

The substantial question of law is answered by holding that the decree as passed is not executable. The decree as passed by the first appellate Court is modified by specifying the exact measurements as agreed between the parties.

The decree would now read thus:

Defendant or anybody on behalf of it are hereby restrained perpetually from causing obstruction and interference in the peaceful and lawful possession of the plaintiff.

The said property was also measured by the defendant while alteration and modification of building and for that proposed map for compound wall was submitted to Municipal Council Buldhana.

The same was approved by Municipal Council Buldhana and it issued permission dated 20/1/2003 in favour of the defendant. The defendant through its Chairman on oath stated that the measurement of the property situated at Buldhana, Tq. Dist. Buldhana bearing Nazul Sheet no. 14-B, Plot no. 2 is as follows North-South side 28.32 mt., East West North side 46.50 mt., East-west South side 45 mt. , Noth-south East side 20 mt. Along with this affidavit the defendant has annexed Sanctioned map, copy of Sale Deed, Measurement Map prepared by Court Commissioner. The defendant society undertakes that it will construct the compound wall within four boundaries of property which was owned and possessed by it. The defendant also undertakes that towards North side of the property, the defendant society will construct the compound wall on the boundary line shown by Court Commissioner in his measurement sheet prepared by him.

In view of aforesaid, the second appeal stands allowed in aforesaid terms. Decree be drawn accordingly. No costs.

JUDGE