

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

SECOND APPEAL NO. 137 OF 2016
WITH
CIVIL APPLICATION NO. 2056 OF 2016

Ramesh Shankar Shetkar ... Appellant

Versus

Nilesh Ramrao Shetkar and others ... Respondents

.....
Mr. Vivek Bhavthankar, Advocate for appellant
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : FEBRUARY 23, 2016

ORDER :

1. Heard learned counsel Mr. Bhavthankar. Mr. Bhavthankar contends that property bearing House No.105 stated to have been measured by the court commissioner in execution of decree, is not the property, involved in suit. Said property is of one Mr. Baburao Mendke and not the property in suit.

2. Learned counsel further intends to contend that House No. 105 purportedly measured is not the suit property and it is, as stated above, property belonging to one Mr. Mendke. He submits that, his objection on that count before the courts below has failed. He further contends that no notice prior to the measurement had

been given by the court commissioner to present appellant. He, as such, earnestly requests to consider the second appeal.

3. The judgments by the two courts hitherto have concurrently considered that the house property inspected and measured by the court commissioner is the same as the one referred to and described in the plaint of regular civil suit No. 9 of 2005 in the court of civil judge, junior division, Biloli, decree of which is put in execution.

4. The courts have further considered that if at all the house measured by the court commissioner belongs to one Mr. Baburao Mendke, then he may come forward to the court and raise objection. The courts have further noticed that no such ground had ever been raised in the written statement.

5. The appellate court has quite elaborately discussed the matter in paragraphs No. 6 and 7 of its judgment.

6. It further appears that ground about notice having not been served on the appellant before measurement is for the first time being taken in the second appeal and that too in oral submissions. Such a ground is not fortified by production of any material.

7. Second appeal does not appear to raise any substantial question of law. As such, second appeal stands dismissed.

8. In view of dismissal of second appeal, civil application does not survive and stands disposed of.

(SUNIL P. DESHMUKH, J.)

sms