

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

SECOND APPEAL NO. 467 OF 2012

Balaji s/o Maruti Ubale
- died Thr. L.Rs. & Ors.

**..... APPELLANTS
[ORI. DEFENDANTS]**

V E R S U S

Datta s/o Mahajan Ubale

**..... RESPONDENT
[ORI. PLAINTIFF]**

.....

Mr. M.V.Ghatge, Advocate for Appellants.

Mr. B.G.Deshmukh, Advocate for Respondent.

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CORAM : T.V.NALAWADE, J.

DATE : 30th MARCH, 2016

ORAL ORDER :-

. The Appeal is filed by the defendant of R.C.S. No. 506/2000 which was pending in the Court of the Joint Civil Judge [Jr. Division], Nanded. The Trial Court has decreed the Suit filed for removal of encroachment and this decision is confirmed by the first appellate Court [District Judge – 3, Nanded] in R.C.A. No. 121/2002. Both sides are heard.

2. Plaintiff Datta is owner of land G.No. 17 admeasuring 1 H. 62 R. and the land of defendant Balaji is situated on western side of land G.No. 17. It is the case of the plaintiff that the defendant made encroachment to the extent of 10 R. portion in the month of March, 2000 over land G.No. 17 from the western side and so the cause of action took place. Through the Taluka Inspector of Land Records the plaintiff got measured the land in the presence of defendant and it became clear that there was encroachment to the extent of 10 R. portion the defendant refused to give back possession. Then the Suit came to be filed for the relief of possession of the encroached portion.

3. The defendant filed Written Statement and contested the matter. The defendant admitted that the plaintiff is owner of land G.No. 17 and defendant is owner of land G.No. 3. He denied that he has made encroachment over the land of plaintiff. He contended that there is common bandh between these 2 lands and it is there since last many years and there was no question of making encroachment over the land of plaintiff.

4. Issues were framed on the basis of aforesaid pleadings. Both sides gave evidence. The trial Court believed the evidence of plaintiff, the evidence of Cadastral Surveyor and held that the encroachment is proved. This finding is confirmed by the first appellate Court.

5. Learned counsel for the appellant took this Court through the evidence of Cadastral Surveyor and the evidence

of the parties. He submitted that it was necessary for the Cadestral Surveyor to measure not only G.No. 17 but to measure G.No. 3 also and there is no convincing evidence to show that G.No. 3 also was measured. The Cadestral Surveyor has given evidence that he measured both the lands. Learned counsel for the appellant placed reliance on the decision given by this Court at Nagpur in **Second Appeal No. 123 of 2013 [Laxman Wamanrao Nagapure Vs. Shankar Haribhau Adhau & Anr.]**. Learned counsel submitted that this Court has made observations that when there is Suit filed for removal of encroachment, the lands of both the parties need to be measured.

6. This Court has carefully gone through the evidence of the Cadestral Surveyor. The evidence of Cadestral Surveyor shows that he could notice boundary marks of both the lands and he took measurement in presence of the parties. Notices were given to the parties and defendant has admitted that he received notice and in his presence measurement was done. There were boundary marks and so, the measurement of G.No. 17 only was sufficient after giving notices to the adjacent land owners. The rules with regard to measurement prepared under the provisions of Maharashtra Land Revenue Code need to be considered in that regard.

7. The circumstance that there was common bandh in existence between these 2 lands, can not make much difference. In the case like present one, the cause of action takes place when after taking measurement it is ascertained

that there is encroachment. Further, the defendant did not take the defence of ownership due to adverse possession. The title of the plaintiff over land G.No. 17 is admitted. In the cross examination, the defendant has given vital admission that his possession over disputed 10 R. portion was from 2 years prior to the date of Suit. In view of these circumstances and as the defendant did not opt for superior measurement as provided under Maharashtra Land Revenue Code, there was no other alternative before the Courts below than to decree the Suit. There are concurrent findings and they are on question of fact. No substantial question of law as such is involved in the present matter.

8. In the result, Second Appeal stands dismissed. In view of dismissal of the Appeal, C.A. No. 7907 of 2012 also stands disposed of.

[T.V.NALAWADE, J.]