

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

APPEAL FROM ORDER NO. 80 OF 2013

Bhaskar s/o Maruti Karad
& Anr.

..... APPELLANTS

V E R S U S

Madhav s/o Ananda Watane
- died – Thr. L.Rs. & Ors.

..... RESPONDENTS

.....

Mr. S.Y.Patil h/f M.P.Kolpe, Advocate
for appellants.

Mr. S.R.Kedar h/f Mr. D.H.Jadhavar,
Advocate for R.No. 1-A to 1-E.

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CORAM : T.V.NALAWADE, J.

DATE : 20th JANUARY, 2016

ORAL ORDER :-

. The Appeal is filed to challenge the common Judgment and decree of R.C.A. No. 116/2009 and R.C.A. No. 241/2009 which were pending before the District Court, Osmanabad. Both the learned counsels are heard.

2. It appears that present appellant has filed R.C.S. No. 325/1998 for removal of encroachment made on his land by the defendants. Said Suit was decided in

favour of the appellant. Another Suit viz. R.C.S. No. 250/1998 was filed by the present respondents for the relief of injunction and declaration. They had claimed relief of declaration in respect of the portion shown to be owned by them in revenue record and also in respect of the portion which is allegedly encroached by them. This Suit was dismissed.

3. Both these decisions were challenged by the present respondents. The District Court has allowed both the appeals and has remanded both the matters to the trial Court for fresh trial. However, the District Court has restricted the scope of fresh trial and both sides are allowed to take measurements to ascertain encroachment, if any, and that is to be done through the District Inspector of Land Records. The evidence is to be allowed only in respect of such fresh measurement.

4. It appears that the Taluka Inspector of Land Records, who gave report that there is an encroachment, admitted in his evidence that no notices of measurement were given to the parties and also to the other adjacent owners. Due to this circumstance and other circumstances, the District Court has held that the measurement is not binding on the defendants of that Suit. It can not be disputed that if the notices of the measurement are not given to the parties, the measurement can not bind them as the notices are mandatory as they are private measurements. In view of this circumstance, no fault can be found in the decision of

the District Court of setting aside the decree given in favour of the present appellants in their Suit. It can be said that the other Suit could have been independently decided even by the Civil Court considering the nature of the reliefs claimed by the present respondents. However, the District Court has preferred to remand that matter also to the trial Court.

5. When there were 2 Suits and the decree in 2 Suits are set aside by the appellate Court, only one Appeal is filed. This circumstance also can not be ignored. No relief of injunction is given in the Suit filed by the defendants against the present appellants and so no prejudice will be caused to them if both the matters are again decided by the trial Court. This Court sees no reason to interfere in the decision of the District Court.

6. In the result, Appeal from Order stands dismissed.

[T.V.NALAWADE, J.]