

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APEAL FROM ORDER NO. 122 OF 2015
WITH CA/4004/2015 IN AO/122/2015

IRPHAN GULABBHAI PATHAN
VERSUS
GORAKSHA BHASKARRAO KALE AND OTHERS

.....
Advocate for Petitioner : Mr. Gawali Amol K.
Advocate for Respondents : Mr. Y. V. Kakade
.....

CORAM : V. K. JADHAV, J.
DATED : 30th MARCH, 2016

PER COURT:-

1. Being aggrieved by the judgment and decree dated 28.7.2014, passed by learned Principal District Judge, Ahmednagar in R.C.A. No. 48 of 2008, the original defendant (appellant before the lower appellate court) has preferred this appeal.

2. Brief facts, giving rise to the present appeal, are as follows:-

a) The respondents-original plaintiffs instituted the suit bearing R.C.S. No. 68 of 2004 against the present appellant seeking relief of mandatory injunction for removal of encroachment for delivery of possession of 20 Sq. meters of land. Learned C.J.J.D. Shevgaon, by judgment and decree dated 21.1.2008, decreed the said suit. Being aggrieved by the same, present appellant had challenged the said judgment and

decree passed by the C.J.J.D. Shevgaon dated 21.1.2008 before the District Court by filing R.C.A. No. 48 of 2008.

- b) The learned Principal District Judge, Ahmednagar after hearing the parties by judgment and order dated 28.7.2014 partly allowed the appeal and thereby remanded the case to the trial court with certain directions, prominent amongst them, to appoint City Survey Officer as Court Commissioner to survey and measure the suit property and particularly the western side road of the suit property, to locate and fix the point and specifically to bring on record the width of the western side road and to locate the area in occupation of plaintiffs, if any, from and out of the suit property and whether there is any encroachment on the suit property or not. Being aggrieved by the same, this appeal is preferred.
3. Instead of going into the merits of the case, I prefer to dispose of this appeal on the basis of the statement made by learned counsel for the respondents, treating the same as subsequent events after filing of this appeal before this Court.
4. Learned counsel for the respondents-original plaintiffs submits that as per directions given by the lower appellate court, the

respondents-plaintiffs have deposited necessary charges for measurement and accordingly measurement was carried out by the City Survey Officer, as directed. Learned counsel further submits that after measurement, concerned Officer has submitted report before the trial court. The respondents-plaintiffs accordingly, have examined concerned Officer from the office of Deputy Superintendent of Land Records before the trial court at Exh.107 and the said witness is subjected to cross examination at length even by the present appellant-original defendant. Learned counsel submits that the plaintiff Macchindra has filed his affidavit to that effect in reply to the civil application No. 4004 of 2015 and also produced on record alongwith his reply the deposition of said witness.

5. In view of the above, since the matter is now posted before the trial court for arguments, no purpose would be served by deciding the present appeal on merits or to examine whether the remand order passed by the lower appellate court is proper, correct and legal. Learned counsel for the appellant, at this stage, submits that the trial court may be directed to dispose of the suit as expeditiously as possible and preferably within a period of three months.

6. Learned counsel for the respondents-original plaintiffs has filed an application before the trial court contending therein that the

measurement was not carried out as per directions given by the lower appellate court and Deputy Superintendent of Land records may be directed to carry out re-measurement strictly as per the directions given by the lower appellate court. Learned counsel submits that the said application is allowed by the trial court and accordingly re-measurement of the land has been directed.

7. In view of the above, the following order would meet the ends of justice:

ORDER

- I. The appeal is hereby dismissed.
- II. The trial court is hereby directed to dispose of the suit bearing R.C.S. No. 68 of 2004 as expeditiously as possible and preferably within a period of three months from today.
- III. In view of disposal of appeal from order, civil application No. 4004 of 2015 is also disposed of.

(V. K. JADHAV, J.)

rlj/