

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

***SECOND APPEAL NO. 186 OF 2014
Along with
CIVIL APPLICATION NO.464 OF 2014***

Krishna Genu Chavan & ors. ... Appellants
V/s.
Changdeo Namdeo Chavan & ors. ... Respondents.

Mr.V.S.Talkute, for Appellants / Applicants.
Mr.Surel Shah, for Respondent Nos.1 to 4.

***Coram : N.M. Jamdar, J.
Tuesday 28 June, 2016.***

P.C. :-

The Appellants challenge the concurrent Judgments and Orders passed by the Civil Judge Junior Division, Malshiras and the District Judge, Malshiras dated 8 July 1996 and 26 November 2013 decreeing the Suit filed by the Respondent-Plaintiffs and dismissing the Appeal filed by the Appellants.

2. The Suit was filed by the Respondent-Plaintiffs for recovery of possession of encroached portion from the Appellants. The learned Civil Judge decreed the Suit and directed the Appellants to hand over possession of land admeasuring 34 R. An Appeal bearing No.46 of 2005 was filed by the Appellants. The Appeal was dismissed by the learned District Judge, Malshiras. The Second

Appeal bearing No.606 of 2010 was filed by the Appellants. In this Appeal this Court directed measurements to be carried out. The measurement was to be carried out by the District Inspector of Land Records. Since the measurement was carried out by the Cadastral Surveyor from office of taluka Inspector of Land record, by further order dated 15 December 2011, the District Inspector of Land Records was directed to carry out the measurements. The report was placed before the Court and Second Appeal No.606 of 2010 was accordingly allowed and the proceedings were remanded back to the learned District Judge for consideration of the report and Regular Civil Appeal No.46 of 2005 was restored. Thereafter the learned District Judge considered the report placed on record and the measurements carried out and dismissed the Appeal by the order dated 26 November 2013.

3. The learned counsel for the Appellants submitted that the report relied upon by the learned District Judge was not in consonance with the orders of this Court and inspite of taking objection in the written submissions, this report has been relied upon. He submitted that various statements have been made by the Commissioner in his deposition due to which the report of the Commissioner does not inspire any confidence. He submitted that local inspection which is carried out must be in conformity with the orders of the Court. The learned counsel also submitted that there is no finding that the report is correct.

4. When the Appeal was remanded to the District Court, there was no objection raised by the Appellants that the report is not in consonance with the earlier directions. If the report was not in consonance with the earlier directions and if this Court felt that it was a requirement then there was no question of remanding the Appeal to the District Court. This Court had directed an authority to carry out the measurements and this Court was satisfied that the report was properly carried, which is clear from the order dated 4 February 2013. Even otherwise, as pointed out by the learned counsel for the Respondents, when the measurement was carried out upon remand by *pre-nimtaana*, no objection was raised.

5. As regards the evidence of the Commissioner, he was examined by the Appellants themselves. He has stated that these measurements were *pre-nimtaana* and thereafter superior authority has carried out *nimtaana* measurements. In the cross-examination the witness examined by the Appellants has proved the measurements. Both the Courts after assessing the evidence on record and measurements carried out have come to the conclusion that the Appellants have encroached on the suit land. There is no error in these findings. The arguments advanced do not lead to any question of law much less any substantial question of law which is requirement for entertaining an appeal under Section 100 of the Code of Civil Procedure. The Appeal is accordingly dismissed.

6. The Civil Application is disposed of.

(N.M. Jamdar, J.)