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

*SECOND APPEAL NO. 113 OF 2014
with
CIVIL APPLICATION NO. 279 OF 2014*

Mahadev Aba Khandekar,
Since deceased through L.Rs. ... Appellants/Applicants.

V/s.

Muktabai Aba Shelke. ... Respondent.

Mr. A.R. Metkari, for the Appellant/Applicants.
Mr. Ashutosh Gole for the Respondent.

CORAM : N.M. Jamdar, J.

18 April, 2016.

P.C. :-

On 9 September 2014 following order was passed in the Appeal and the matter is kept on board for final disposal :-

- “1. Heard the learned counsel for the appellants.*
- 2. In the evidence of Cadestral Surveyor / Court Commissioner P.W.No.2, Saiabrao Bhosale in his examination stated that Gut No.392 is a contiguous piece of land and he has measured the same, without finding out or making any sub divisions thereof. The sub divisions have not been numbered and it was necessary to have measurements of the sub divided Gut No.392.*

3. *In the light of the above evidence and in the light of the admitted fact that part of the suit land was sold by the respondent plaintiff to the present appellants / defendants and one Pandurang Kolekar, it was necessary to have measurements of all the pieces of land sold in tandem with the original Gat No.392 without which it was not possible to arrive at a conclusion that the appellant defendant made encroachment as claimed.*

4. *Looking to the above factual position, in my opinion, suit deserves to be remanded to the trial judge for having proper measurements of the sub divided sold area of Survey No.392 in the light of the judgment of the Supreme Court in the case of Haryana Waqf Board vs. Shanti Sarup and Others reported in (2008) 8 SCC 671 and various single Judges judgments of this court at the Nagpur Bench. Hence, I frame the following substantial question of law:*

“Whether the courts below committed an error in not insisting on the measurements of all the sub divisions of the sold area of Gat No.392 to various persons before arriving at the conclusion that the appellant defendant made measurement particularly in the light of the above evidence of P.W.No.2, Saiabrao Bhosale, the Court Commissioner.”

5. *Issue notice for final disposal as to why the proceedings of the Regular Civil Suit No.93 of 1985 should not be remitted to the trial court for fresh trial in the light of the above, returnable on 7th October, 2014.”*

2. Heard the learned Counsel for both the sides. Admit. Taken up for hearing. Paper-book dispensed with.

3. This Court has already expressed that the Suit deserves to be remanded to the Trial Court for proper measurement of the sub-divided

sold area of Survey No.392. I have perused the evidence placed on record by the parties. The Surveyor was examined and in the cross-examination, the Surveyor has clearly admitted that he had not carried out the measurements before making sub-divisions of the property. In view of this clear admission of the Surveyor whose evidence is relied upon by the parties, need for remanding the proceedings to the Trial Court is clearly made out as observed in the order dated 9 September 2014.

4. The learned Counsel for the Respondents submitted that admission of the Appeal will serve no purpose if the matter is to be remanded, the Suit be expedited since it is pending since the year 1985. Considering this position, the substantial question of law framed in the order dated 9 September 2014 is answered in affirmative and the Suit will have to be remanded to the Trial Court for fresh trial.

5. Accordingly, the Second Appeal is allowed. The Judgment and Decree passed by the District Judge, Pandharpur on 21 January 2013 in Civil Appeal No. 95 of 2006 and the Judgment and Decree passed by the Civil Judge, Junior Division, Mangalwedha on 1 August 2006 in Regular Civil Suit No. 93 of 1985 are quashed and set aside. The Regular Civil Suit No. 93 of 1985 stands restored to the file of Civil Judge, Junior Division, Mangalwedha to be disposed of in light of their order. The learned Civil Judge, Junior Division, Mangalwedha, keeping in mind that the Suit is of the year 1985, will make an endeavour to dispose of the same by 31 December 2016. The parties shall appear before the learned Civil Judge, Junior Division, Mangalwedha on 2 May 2016.

6. Registry to communicate this order to the learned Civil Judge, Junior Division, Mangalwedha, forthwith, in addition by way of e-mail, if possible.
7. Parties to act on authenticated copy of this order.
8. Civil Application is accordingly disposed of.

(N.M. Jamdar, J.)