

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

SECOND APPEAL NO. 216 OF 2016

Saudagar Shankar Dighe
(since deceased, through LRs)
& ors.

... Appellants

v/s

Satappa Basappa Yewale & anr.

... Respondents

Mr.Sarang Aradhye for the appellants.
None present for the respondents.

***Coram: N.M. Jamdar, J.
Dated: 29 June 2016***

ORAL ORDER:

Heard learned counsel for the Appellants.

2 The Appellants challenge the concurrent judgment and order passed by the learned Civil Judge, Junior Division, Sangola, and the District Judge, Pandharpur, whereby the suit filed by the Respondents/Plaintiffs is decreed and the appeal filed by the Appellant is dismissed. The learned Civil Judge decreed the suit and directed the Appellant to hand over vacant possession of 54 Ares of land, out of the suit land.

3 Learned counsel for the Appellants submitted that adjacent to

the disputed land, the land Gat No.740 belongs to Plaintiff No.2 was admittedly not measured by the Surveyor/Commissioner and both the Courts have not considered the implications of not carrying out the measurement of the adjacent land. He submitted that, without this measurement being carried out, the encroachment could not be determined.

4 Both the Courts have negated this submission. The dispute is only within Gat No.735. Gat No.735/2 is sold by the Appellants to Plaintiff No.2 and remaining area in possession of the Appellant is numbered as 735/1. Both the Courts, on facts, found that what was necessary was measurement within the Gat No.735 and, therefore, measurement of Gat No.740 was not necessary and on that ground the Surveyor's report cannot be considered to be inaccurate. Both the Courts have rendered a finding of fact in this regard. There is no perversity in this approach. If a dispute arises between the boundaries out of a particular piece of land whose boundaries are known, then the measurements of an unconnected piece of land is not necessary. Even otherwise, merely because another view is possible on assessment of evidence, is no ground to entertain the appeal under Section 100 of the Code of Civil Procedure.

5 No substantial question of law arises. The second appeal is accordingly rejected.

(N. M. Jamdar, J.)