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

SECOND APPEAL NO. 168 OF 2014

Mr. Mahadeo Pandharinath Dhole & Anr. ... Appellants.

V/s.

Mr. Maruti Vitthal Choudhari & Anr. ... Respondents.

Mr. Vishal Kanade i/b. Satish Raut for the Appellants.
None for the Respondents.

CORAM : N.M. Jamdar, J.

08 August, 2016.

Oral Order :-

The Appellants challenge the concurrent Judgments and Orders passed by the learned Civil Judge, Senior Division, Pune and the District Judge, Small Cause Court, Pune whereby the Suit and Appeal filed by the Appellant have been dismissed. The Suit was filed by the Appellants for declaration and removal of encroachment alleged to be carried out by the Respondents.

2. The learned Counsel for the Appellants submitted that both the Courts have erroneously proceeded on the basis that the District Inspector of Land Records (DILR), Pune, whose map was produced, was not examined, without considering that the case of the Appellants has not been controverted by the Respondents. This submission cannot be accepted. In the suits complaining of encroachment, measurement of the land is a crucial piece of evidence. According to the Appellants, measurement by the DILR was carried out. This document was produced and relied upon. Once this document was relied upon by the Appellant, it was up to the Appellants to prove that the measurements were carried out after following the due procedure. Both the Courts have rightly held that the Commissioner having not been examined it has not come on record whether this measurement was carried out after giving due notice and whether the Respondents were present. This is a case where the Appellants are relying on the demarcation map executed by the DILR prior to filing of the Suit. Merely because the case is not controverted, the Suit cannot be automatically decreed.

3. The learned Counsel for the Appellants then submitted that the proceedings be remanded back to the Trial Court since in cases of encroachment, measurement is necessary. In the facts of the present case, at this stage this request cannot be considered. The

Appellants made no efforts to examine the Commissioner, whose map they had relied upon, during the trial. No request was made to the learned Civil Judge to appoint an independent Commissioner. No request was made to appoint a Commissioner after the learned Civil Judge held against the Appellants on the ground of non-examination of the Commissioner. No request was made even in the First Appeal to appoint a Commissioner. Therefore, there is complete apathy shown by the Appellants as regard the measurement of the land and therefore, the request made at this stage cannot be considered. No question of law arises. The Second Appeal is dismissed.

(N.M. Jamdar, J.)