

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.388 of 2014

(Balkrushna s/o Ganaji Wasake v. Maroti s/o Dasru Shende, now deceased,
through LRs. Smt. Vithabai wd/o Maroti Shende and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri A.V. Bhide, Advocate for Appellant.
Shri Tejas Deshpande, Advocate for Respondent No.1C.

Coram : R.K. Deshpande, J.

Date : 6th December, 2016

The Trial Court passed a decree in Regular Civil Suit No.116 of 1998 on 25-8-2003. The operative portion of the order is reproduced below :

“ *The suit is decree with costs.*

Defendant no.1 Balkrushna Ganaji Wasak shall handover the possession of the land to the extent of 60 R situated towards Northern side of Gat no.153 of village Lohara Tq. Ralegaon distt. Yavatmal to the plaintiff Maroti Dasaru Shende as shown in the blue triangle in the T.I.L.R. map Exh.31.

The defendant no.2 to 6 shall handover the possession

of 0.08 R. of land situated to the Southern side of Gat no.153 of village Lohara, Tq. Ralegaon, distt. Yavatmal to the plaintiff as shown in Pink coloured triangle in the T.I.L.R. map Exh.31.

Enquiry as to mesne profits under Order 20 Rule 12 be conducted.

Map Exh.31 shall form part of the decree.

Measurement proceedings be returned to the T.I.L.R. office.”

It is held that the defendant No.1 has encroached over 60 R of land situated towards northern side of Gat No.153 of Village Lohara and the possession of it should be handed over to the plaintiff, as shown in the blue triangle in the T.I.L.R. map at Exhibit 31. The lower Appellate Court concurs with the findings recorded by the Trial Court in Regular Civil Appeal No.61 of 2003, decided on 31-7-2014.

On 8-2-2016, this Court passed an order as under :

“ *Heard learned counsel for the appellant. He submits*

that there is a finding in para 9 of the judgment of Trial Court that the area comes to 57.02 Gunthas. The decree is passed for the entire 60R, which cannot be reconciled.

Issue notice before admission, returnable in six weeks.

Civil Application No.1021 of 2014 :

Heard.

Parties to maintain status quo.”

I have gone through para 9 of the judgment delivered by the Trial Court. The lower Appellate Court holds that the Trial Court has applied its own personal knowledge about geometry and has tried to show that the measurement done by the Surveyor was proper. Though, while trying to see the correctness of the report of the Surveyor, the Court arrived at a finding that the rough calculation comes to 57.02 Gunthas, it passed a decree holding that there is an encroachment of 60 R of land. The lower Appellate Court takes this fact into consideration and holds that the Trial Court did not find any error in the measurement carried out by the Surveyor, P.W.2.

There is no dispute that the Surveyor in his report and the map at Exhibit 31 has clearly indicated the encroachment to the extent of 60 R of land. Merely because the Trial Court could not calculate it by its own method of geometry, the position would not change. The map at Exhibit 31 has been proved and the report of the Court Commissioner is that 60 R of land has been encroached. Both the Courts below have accepted this fact. Hence, the contention raised does not give rise to any substantial question of law.

The second appeal is dismissed.

Judge.

Lanjewar