

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 7543 OF 2017
IN
SECOND APPEAL (ST) NO. 10048 OF 2017
WITH
SECOND APPEAL (ST) NO. 10048 OF 2017**

Ganesh Santaram Bhujbal and Another ..APPLICANTS

VERSUS

Saraswati Eknath Bhujbal and Others ..RESPONDENTS

....
Mr. Hemant Surve, Advocate for applicant/appellant.
....

**CORAM : N.W. SAMBRE, J.
DATED : 13th JUNE, 2017**

ORDER :

There is delay of 59 days in preferring Second Appeal. For the reasons stated in Civil Application No. 7543 of 2017, same is condoned and the appeal is taken up for final disposal.

2. Heard Mr. Surve, learned Counsel for the appellants/original defendants. Regular Civil Suit No. 721 of 2011 came to be filed by the respondents/plaintiffs seeking relief of measurement, demarcation, fixation of boundaries and perpetual injunction.

3. The 3rd Joint Civil Judge, Junior Division, Newasa decreed the suit by judgment and order dated 30th January, 2014. The learned Trial Court ordered the Deputy Superintendent of Land Records, Newasa to carryout measurement of the entire land Gut No. 246. The costs was directed to be borne by plaintiffs/ present respondents herein.

4. The appellants/ original defendants, feeling aggrieved by the aforesaid decree, preferred Regular Civil Appeal No. 269 of 2014. The said appeal came to be dismissed by judgment and order dated 15th October, 2016 passed by the District Judge-1, Newasa and as such, this Second Appeal.

5. Mr. Surve, learned Counsel canvased the background that right to property as provided under Article 300A of the Constitution of India and enjoyment of property pursuant thereof is always controlled by reasonable restrictions. However, according to him a common law cannot be rolled in motion so as to hamper the right of the present appellants/defendants in enjoying the property which is absolutely owned by them. According to Mr. Surve, what is ordered by the Court below is measurement of Gut No. 246 which includes land of the appellants which appears to be wrong approach

on the part of the Court below as it was expected to the Court below to order measurement of complete Khasara of its survey number. With the assistance of Mr. Surve, I have perused the findings recorded by both the Courts below. The learned Trial Court framed the issues at Exhibit 18 and noted that the plaintiffs have proved that to elucidate the matter in dispute appointment of Court Commissioner for measurement of the suit property was necessary. However, other issue whether the present appellants have tried to invade the rights of the respondents/original plaintiffs for enjoyment of property has been answered by present appellants.

6. While recording the reasons on Issue No.2 as regards necessity of measurement of the suit property, the Trial Court had considered the evidence brought on record and then with a reasoned order noted that the case for grant of relief of measurement was made out. While ordering such measurement, the Trial Court considered the boundary dispute between the parties.

7. In appeal, the lower Appellate Court considered the points which were framed pursuant to the issues sought to be canvassed before it and confirmed the judgment and decree of the Trial Court. Though the lower Appellate Court did not appreciate the entire evidence in detail, still has

proceeded to record findings in favour of the respondents/plaintiffs. There are concurrent findings recorded against the present appellants/defendants.

8. Apart from the above, the order of measurement as passed by the learned Trial Court which was confirmed by the Appellate Court is in tune with the statutory rights of the parties. While exercising such statutory rights, even if the ground under Article 300A of the Constitution of India is sought to be pressed, however, right of enjoyment of property is with certain reasonable restrictions which are very much clarified. The order of the Court below is within such clarification, which in my opinion does not call for any interference. The appeal lacks substantial question of law, hence stands dismissed.

(N.W. SAMBRE, J.)

SSD