

(1)

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

**SECOND APPEAL NO. 504 OF 2013**

Mandakini w/o Govind Bangar,  
Age: 51 years, Occu: Household,  
presently R/o: Pune,  
Through her Special Power of  
Attorney Shri Govind s/o Zingarji Bangar,  
Age: 58 years, Occu: Service,  
R/o: C/o Syndicate Bank,  
Karve Nagar, Behind Cummins College,  
Vardhaman Nagar, Shahu Colony,  
Pune-58

..APPELLANT

VERSUS

1. Prabhakar s/o Bhausing Pawar,  
Age: Major, Occu. : Service,  
R/o.: Village Ektune, Near Village  
Adool, Tq. & Dist. Aurangabad
2. Rauf s/o Haji Mohd.,  
Age: Major, Occu.: Business,  
R/o: Kiradpura, Aurangabad
3. Ambadas Ghorpade,  
Age: Major, Occu.: Not known,  
R/o: Plot No. 12, Prithviraj Nagar,  
Garkheda, Aurangabad

..RESPONDENTS

Mr N. T. Bhagat, Advocate for appellant

**CORAM : N.W. SAMBRE, J.**

**DATE : 5<sup>th</sup> June, 2017**

**ORAL ORDER**

Regular Civil Suit No. 107 of 2003 instituted by the present appellant  
– original plaintiff for possession, perpetual and mandatory injunction came  
to be dismissed on 20<sup>th</sup> February, 2004, which decree was confirmed in

(2)

first appeal being Regular Civil Appeal No. 155 of 2004 vide judgment and decree dated 5<sup>th</sup> July, 2010. Amongst other, the reasons as were recorded for dismissal are, that the present appellant – plaintiff has failed to bring on record the actual measurement/details of the encroachment made. The findings as regards the title of the present appellant to the suit property is observed to be very much established.

2. The respondents - defendants have not contested the claim before any of the Courts. As such, the factum of encroachment was not disputed, however, what was observed was, the exact dimensions of the encroachment were not proved.

3. The Appellate Court towed the same line of reasoning.

4. In the aforesaid backdrop, a motion is made by the learned Counsel for the appellant – plaintiff for withdrawal of the appeal with liberty to file a fresh suit by placing on record the dimensions of the encroached area after getting the report to that effect from an expert.

5. Since the above referred issue is not controverted, in my opinion, the appeal needs to be disposed of, as withdrawn as prayed, with liberty to file a fresh suit after placing on record therein the dimensions of the encroached area and expert's report about the said measurement. Accordingly, the present appeal stands disposed of as withdrawn, with liberty as prayed for.

(3)

6. Time consumed before this Court in prosecuting the present appeal from the date of the suit be considered while dealing with the issue of limitation, if so raised in the fresh suit.

**(N.W. SAMBRE, J.)**

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