

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

**SECOND APPEAL NO. 159 OF 2016**

Bhaginath Tukaram Ghusale,  
Age : Major, occu. Agri.,  
R/o Shulibhanjan, Taluka  
Khultabad, Dist. Aurangabad

**APPELLANT**  
**(ORIG. DEFENDANT)**

**VERSUS**

M/s Krishna Valley Estate Pvt. Ltd.,  
A Company Registered under the  
Companies Act and having its registered  
office at 14, N-3, CIDCO, Aurangabad,  
through its Authorized Director  
Shri Ravindra s/o Champalal Khivansara,  
Age : 44 years, Occu. Business,  
R/o Aurangabad

**RESPONDENT**  
**(ORIG. PLAINTIFF)**

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Mr. D.K. Dagadkhair, Advocate for the Appellant  
Mr. P.B. Shirsath, Advocate for the Respondent

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**CORAM : SANGITRAO S. PATIL, J.**

**DATE : 25th JULY, 2017**

**ORAL ORDER :**

Heard the learned counsel for the appellant  
(original defendant) and that of the respondent  
(original plaintiff).

2. The appellant has challenged the concurrent  
finding of fact recorded by the Trial Court in Special  
Civil Suit No. 11 of 2009 and confirmed by the First

Appellate Court in Regular Civil Appeal No. 538 of 2012, as a result of which, the appellant has been directed to deliver possession of the suit land admeasuring 2 hectares 57 Ares out of block No. 68 to the respondent that was found to have been encroached upon by the appellant.

3. Undisputedly, the land admeasuring 1 Hectare 93 Ares is standing in the name of the appellant in the Record of Rights out of block No. 68. The measurement map (Exh-51) is produced on record, wherein the location of the said land has been shown by blue lines. There is no dispute that the appellant is in possession of said portion of land admeasuring 1 hectare 93 Ares. If that be so, the appellant is not entitled to claim possession over the land exceeding 1 hectare 93 Ares. However, it was found that he had encroached upon the land other than the land which is standing in his name in the Record of Rights and therefore, after evaluating the evidence of the parties, the Trial Court as well as First Appellate Court directed the appellant to deliver possession of the said excess area of land found to have been encroached upon by him to the respondent. This concurrent finding of fact needs no interference.

4. The appellant has filed Civil Application No. 8534 of 2017, seeking permission to produce certain documents i.e. a Deed of Partition dated 7<sup>th</sup> April, 1999 and Sale-deed dated 29<sup>th</sup> June, 1994. All these documents were available to the appellant when he contested the suit before the Trial Court as well as the First Appellate Court. These documents, in the absence of any justifiable reason for not producing before the Trial Court as well as the First Appellate Court, cannot be allowed to be produced at this stage, more particularly when the evidence on record clearly shows that the appellant is in actual possession of the land admeasuring 1 hectare 93 Ares which belongs to him. Even if the said documents are allowed to be produced on record, the appellant would not be entitled to get any more land than that is shown to be in his actual possession by blue lines in the measurement map (Exh-51). In my view, no substantial question of law is involved in this appeal. Hence, I pass the following order:-

**O R D E R**

(i) The Second Appeal is dismissed.

(ii) Civil Application No. 8534 of 2017 is dismissed.

(iii) In view of dismissal of the Second Appeal, Civil Application No. 16301 of 2015 does not survive and hence, stands disposed of.

**[SANGITRAO S. PATIL]**  
**JUDGE**

npj/sa159-2016