

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 197 OF 2009
WITH
CIVIL APPLICATION No. 236 OF 2009 IN A.O. No. 197 OF 2009
WITH
CIVIL APPLICATION No. 497 OF 2010 IN A.O. No. 197 OF 2009

Sidraya Baburao Patil (Decd.)	
through his LRs Lakkavva Sidraya Patil	
& Ors.	... Appellants/Applicants
Vs.	
Jayram Shripati Patil & Ors.	... Respondents

WITH
APPEAL FROM ORDER No. 198 OF 2009
WITH
CIVIL APPLICATION No. 237 OF 2009 IN A.O. No. 198 OF 2009
WITH
CIVIL APPLICATION No. 499 OF 2010 IN A.O. No. 198 OF 2009

Sidraya Baburao Patil (Decd.)	
through his LRs Lakkavva Sidraya Patil	
& Ors.	... Appellants/Applicants
Dnyaneshwar Krishna Patil & Ors.	... Respondents

Mr. S.G. Deshmukh, Advocate for the appellants/applicants.
Mr. Tejpal S, Ingale, Advocate for the respondent nos. 2 and 3.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **11th August, 2017.**

P.C.:

Admit. By consent, both the Appeals from Order are heard finally and decided at the stage of admission.

2. The parties in both the Appeals from Order are one and the same and they are fighting for the similar issue and the Appeals filed by both the parties are disposed of by the learned District Judge, Sangli by the common order dated 25th September, 2008. Hence, these two Appeals from Order are also disposed of by one common order.

3. The respondents in Appeal from Order No. 197 of 2009 has filed Regular Civil Suit No. 335 of 1987 for injunction simplicitor that the appellants/defendants shall not cut the trees on a bandh which divides survey nos. 210/1 and 210/2. The respondents/plaintiffs claim the title and possession of Survey no. 210/2 and the appellants/defendants claim ownership and possession of Survey No. 210/1 of village Achakan Halli, Taluka Jat, District Sangli. The Regular Civil Suit No. 335 of 1987 was dismissed by the judgment and order dated 6th March, 1998 by learned Civil Judge Junior Division, Jat, against which the respondents/plaintiffs preferred Regular Civil Appeal No. 172 of 1998.

4. The appellants in Appeal from Order No. 198 of 2009 has filed Regular Civil Suit No. 47 of 1992 for possession of a land which is

covered by dividing bandh between survey nos. 210/1 and 210/2 against the respondents/defendants. The said suit was dismissed was dismissed by judgment and order dated 14th March, 2000 by the learned Civil Judge, Junior Division, Jat, against which the appellants/plaintiffs filed Regular Civil Appeal No. 126 of 2000.

5. The parties have disputed the boundaries of their respective land and therefore, at the time of hearing of both the Regular Civil Appeals, learned District Judge by order dated 25th September, 2008 remanded the matters to the trial Court with a direction of appointment of DILR as Court Commissioner for measurement of lands of the parties and if necessary of the adjoining lands to identify the encroachment.

6. At the time of submissions of learned counsel for both the parties, it is found that the parties are ready for measurement of their lands by the DILR and they are ready to bear the expenses equally, i.e., 50% each.

7. The trial Court Judges have considered the evidence in both the respective suits and thereafter by reasoned orders, the suits were

dismissed. Under such circumstances, I am of the view that it is not correct to remand the matters to the trial Court and again make the parties to undergo the exercise of leading evidence and submitting arguments before the trial Court. The original suits are of 1987. Similarly, the order of appointment of DILR for the purpose of measurement of lands of both the parties is found necessary to adjudicate the issue of the title and possession of lands of both the parties. The Appellate Court is right in making such order of appointment of DILR as Court Commissioner to measure the lands, however, the matters should not have been remanded to the trial Court. The Appellate Court has power to bring additional evidence on record and that can be invoked under Order 27 Rule (b) of the Code of Civil Procedure, which reads thus:

27(b) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined."

8. Hence, both the Appeals from Order are disposed of with following directions :

- (i) The order of the Appellate Court of appointment of DILR as Court Commissioner and measurement of lands is maintained;
- (ii) The order of Appellate Court of remanding the matters to the trial Court for fresh trial is hereby set aside;
- (iii) The Appellate Court shall make a time bound programme in respect of measurement of lands by DILR and shall endeavour to hear the matters and decide it on merits wherein documentary evidence produced by DILR can be relied and read;
- (iv) Both the matters are remanded to the Appellate Court.
- (v) The parties to appear before the Appellate Court on 21st August, 2017 at 11.00 a.m.
- (vi) The Appellate Court shall try to endeavour to decide the matters before 31st December, 2017.

9. Civil Applications are also accordingly disposed of.

(MRIDULA BHATKAR, J.)