

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

SECOND APPEAL NO.270 OF 2017

Mrs. Sunita Ganesh Zade and anr

..vs..

Ashok s/o Govind Komawar and ors

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

Court's or Judge's Order

Shri A.S. Dhore, Counsel for the appellants.

Shri Y.D. Shukla, Counsel for the respondents.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 27, 2017.

1. Heard learned counsel Shri A.S. Dhore for the appellants and learned counsel Shri Y.D. Shukla for the respondents.

2. The present second appeal is filed by the original defendants.

3. The respondents/plaintiffs' suit for recovery of encroached land admeasuring 0.37 HR was decreed and an appeal carried against the said judgment and decree filed by the appellants/defendants was dismissed.

4. According to learned counsel Shri A.S. Dhore for the appellants/defendants, the Courts below ought to have appointed an expert as Commissioner for local investigation. He relies on judgments in the

cases of Haryana Waqf Board ..vs.. Shanti Sarup and ors, reported at 2008 (Supp.) AIR (SC) 616; Bento Antonio Gomes alias Antonio Bento Gomes ..vs.. Rosario Salvador Carneiro and ors, reported at 2014(4) Mh.L.J. 366; and Kashinath Chindhuji Shastri ..vs.. Haribhau Nathuji Bawanthade, reported at 2004(2) Mh.L.J. 724 and submits that the matter is required to be remanded to the Trial Court for appointment of a Commissioner. He also submits that Map Exhibit 36 drawn by Ramesh Hemke cannot be accepted since has faulted in observing procedure.

5. To establish the case in respect of encroachment, cadastral surveyor Ramesh Hemke was examined by the respondents/plaintiffs. The said cadastral surveyor issued Notices to the appellants/defendants, Pandurang Ingole, and Sanjay Paltewar. The said cadastral surveyor carried out measurement in the presence of the appellants/defendants and other persons who were Noticed. The cadastral surveyor Ramesh Hemke was cross-examined.

6. Map Exhibit 36 drawn by cadastral surveyor Ramesh Hemke shows that defendant No.2 i.e. appellant No.2 Ganesh Zade was present at the time of measurement. Said Ganesh Zade did not enter into the witness box.

7. The evidence of cadastral surveyor Ramesh Hemke shows that there is encroachment over the suit land at the hands of the appellants/defendants.

8. The fact that cadastral surveyor Ramesh Hemke issued Notices to the appellants/defendants and not only that in the presence of Ganesh who did not enter into the witness box, cadastral surveyor Hemke has measured the land, in my view, the Appellate Court has rightly recorded a finding that it will be a joint measurement. Therefore, the reliance on the reported cases cited *supra* have no application.

9. The cadastral surveyor was cross-examined. Nothing could be brought on record to discard his evidence or to reach to the conclusion that he has not faulted the proper procedure.

10. No substantial question of law arises in the second appeal. Hence, the second appeal is rejected.

JUDGE

!! BRW !!

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