

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER ST. NO. 27587 OF 2017

Narayan Krashnaji Jadhav
Deceased through LRs

- A) Chanchalabai w/o Narayan Jadhav
age 70 years, occ. household
r/o Sangvi, Tq. Renapur
Dist. Latur.
- B) Jalsabai w/o Haridas Salunke
age 51 years, oc. household
r/o Pokhari Tq. Ambajogai
Dist. Beed.
- C) Nirmalabai w/o Baburao Salunke
age 47 years, occ. household
r/o Nandgaon, Tq. & Dist. Latur
- D) Sajabai w/o Prabhakar Gore
age 45 years, occ. household
r/o Deshpande Galli, Latur
Dist. Latur.

Appellants

Versus

- 1. Dhondiram s/o Hariram Jadhav
age 50 years, occ. agriculture
- 2. Shivaji s/o Hariram Jadhav
age 47 years, occ. agriculture
- 3. Smt. Chandrabhaga w/o Hariram Jadhav
(Died)

All r/o Sangvi, Tq. Renapur
Dist. Latur.

Respondents

Mr. A.N. Nagargoje, advocate for appellants.
Mr. S.S. Manale, advocate for respondents 1 and 2.

CORAM : M.S. SONAK, J.
DATE : 1st FEBRUARY, 2018

ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. Since in the title clause, it is clearly indicated that respondent no. 3 is expired, there is no question of any service upon respondent no. 3. Learned counsel for appellants states that there is no question of taking any steps for bringing on record legal representatives of deceased respondent no. 3. Statement is accepted subject to the risk and consequence of appellants.
3. This appeal challenges order dated 28.11.2016 made by the appeal court. Operative portion of the impugned order reads thus :

1. The appeal is partly allowed.
2. The impugned judgment and decree dated 26.04.2012 passed by the Learned Joint Civil Judge, Junior Division, Renapur, in new RCS No. 41/2008 and old RCS No. 311/2002 is hereby set aside.
3. Suit is remanded to the Court of Civil Judge, J.D. Renapur, for appointment of the qualified surveyor as a Commissioner afresh from the office of the District Inspector of Land Records or Taluka Inspector of Land Records who shall secure records of Gat Nos. 16 and 17 relating to the suit property, ascertain undisputed or settled boundaries, measure both Gat Nos. 16 and 17 and decide as to whether the plea of encroachment made by the plaintiffs is factually correct.

4. The commissioner shall follow the procedure of such measurement as prescribed by rules and furnish his report to the trial Court within six months of the receipt of record and proceeding of Trial Court.

5. All the contentions of the parties on merit are expressly left open.

6. The Parties shall appear before the trial Court on 30.12.2016 without waiting summons.

7. Costs of commissioner shall be borne by the appellants/Ori. plaintiffs.

8. Parties to bear their own cost of present appeal.

9. Decree be drawn accordingly.

10. Record & Proceeding be sent back to the learned trial court.

11. Copy of this judgment be sent to learned Civil Judge, Junior Division, Renapur for information and necessary action.

4. From the record it transpires that the two Commissioners who were appointed by the court for the purpose of appreciating the case of alleged encroachment, failed to follow the procedure as prescribed by the rules and therefore, the report of such Commissioners were discarded by the trial court. All that the appeal court has held is that in such circumstances, yet another opportunity was required to be given to both the parties. Therefore, the appeal court has remanded the matter to the trial court by directing appointment of a qualified surveyor as

Commissioner and further has issued directions to such Commissioner to follow the procedure for measurement as specified by the rules and furnish necessary report before the trial court.

5. In the facts and circumstances of the case, since the major ground for disposal of the suit was non-compliance of prescribed rules and regulations by the Court Commissioner, there is no reason for interference in the discretion exercised by the appeal court.

6. Learned counsel for appellants however, points out that there is admission on the part of original plaintiff to the effect that he was deposing in the suit only in order to grab the suit property. The import of such statement in the course of evidence is not quite clear. Therefore, it is only appropriate that the trial court revisits the entire matter as directed by the appeal court. The appeal court has kept all the contentions of all the parties open by implication. In any case, it is made clear that all the contentions of all the parties are kept open for decision of the trial court.

7. For the aforesaid reasons, appeal is dismissed. There shall be no order as to costs.

8. Pending civil application, if any, does not survive and stands disposed of.

(M.S. SONAK, J.)