

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.352 OF 2018**  
**ALONG WITH**  
**CIVIL APPLICATION NO.327 OF 2018**

|                                                                                                  |                            |
|--------------------------------------------------------------------------------------------------|----------------------------|
| The State of Maharashtra,<br>Through the Superintendent of Police,<br>District Kolhapur and Anr. | .... Appellants-Applicants |
| V/s.                                                                                             |                            |
| Nutan Sanjay Koli and Ors.                                                                       | .... Respondents           |

Mr. A.R. Patil, A.G.P., for the Appellants-Applicants/State.

Mr. Abhijit M. Adagule for Respondent Nos.1 and 2.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 12<sup>TH</sup> JULY 2018.**

**P.C. :**

1. Heard Mr. Patil, learned AGP for the Appellants-State, and Mr. Adagule, learned counsel for Respondent Nos.1 and 2.

2. This Second Appeal takes an exception to the 'Judgment and Decree' dated 3<sup>rd</sup> April 2017 passed by the Ad-Hoc District Judge-2, Kolhapur, thereby allowing the Regular Civil Appeal No.88 of 2014, which was preferred against the 'Judgment and Decree' dated 20<sup>th</sup> February 2014 passed by the 3<sup>rd</sup> Joint Civil Judge, Senior Division, Kolhapur, in Regular Civil Suit No.856 of 2001.

3. The said Suit was preferred by Respondent Nos.1 and 2 herein for removal of encroachment and getting possession of the encroached

portion. As per the case of Respondent Nos.1 and 2, the Appellant-Police Department of the Government of Maharashtra has encroached to the extent of 21-R on their land bearing City Survey No.8/1. Accordingly, Respondent Nos.1 and 2 had carried out measurement of the said land through the T.I.L.R., in which the said encroachment was detected; therefore, Respondent Nos.1 and 2 have filed the Suit for removal of encroachment.

4. The Trial Court dismissed the Suit, only on the ground that the notice of the proposed measurement was not proved to be received by the Appellants herein.

5. In the course of the First Appeal, the matter was remanded at the instance of the Appellants and thereafter, twice, the measurements were carried out by the two independent City Survey Officers. In the said measurements also, the encroachment to the extent of 31-R was detected. Accordingly, Respondent Nos.1 and 2-Original Plaintiffs have carried out amendment in the plaint, seeking possession of the encroached portion of 31-R.

6. Thereafter, the first Appellate Court has considered the entire evidence on record and in the light of the subsequent measurements of the suit land carried out twice, at the instance of the Appellants itself, the first Appellate Court has allowed the Regular Civil Appeal No.88 of 2014 preferred by Respondent Nos.1 and 2 herein and decreed the Suit accordingly.

7. The only contention raised by learned A.G.P. appearing on behalf of the Appellants is that, admittedly, the name of the Appellants is appearing to the extent of 21-R in respect of the land bearing City Survey No.28A/2. However, as rightly pointed out by learned counsel for

Respondent Nos.1 and 2, the said land independently belongs to the Appellants, but as in the measurement it is pointed out and proved that the Appellant has encroached upon the land, bearing City Survey No.8/1, Hissa No.2, belonging to Respondent Nos.1 and 2 herein, and that finding is based on the evidence on record and proper appreciation thereof, no interference is warranted in the Second Appeal.

8. The Second Appeal, therefore, being devoid of merits, stands dismissed.

9. In view of the above, Civil Application No.327 of 2018, pending in the present Second Appeal, does not survive and the same is disposed off as infructuous.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**