

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

***SECOND APPEAL NO. 445 OF 2015
WITH
CIVIL APPLICATION NO. 964 OF 2015***

Shri Shankar Kondiba Raut ... Appellant

Versus

Shri Shankarrao Sadashiv Deshmukh ... Respondents
(since deceased through L.Rs)
Smt. Kusum Shankar Deshmukh & Ors.

Mr. Dilip Bodake for Appellant.
Mr. D. D. Rananaware for Respondent Nos. 1 to 6.

***CORAM : N. M. Jamdar, J.
DATE : 16 January, 2018.***

ORAL ORDER

. By this Second Appeal the Appellant/Original Plaintiff is challenging the Judgment and Order passed by the learned Ad-hoc District Judge-2, Satara dated 11th November 2014 to the extent that the relief of removal of encroachment prayed for by the Appellant/Plaintiff has been negated.

2. The Appellant filed a Regular Civil Suit No. 39 of 2000 in the Court of Civil Judge, Junior Division, Khandala seeking a

relief of injunction. By way of an amendment relief of removal of encroachment was sought for on the ground that Respondent/Defendant had encroached on 6 sq. mtrs. of land. The Regular Appeal No. 16 of 2011 was filed by the Appellant in District Court, Satara. It was dismissed by the Judgment and order dated 11th November, 2014.

3. Heard the learned Counsel for the parties.

4. The Appeal is restricted only to the relief regarding the removal of encroachment. At the instance of the Appellant, Taluka Inspector of Land Record was appointed as a Court Commissioner. The Court Commissioner submitted his report. Both the courts have considered the report as well as oral evidence. Both the Courts found that the Taluka Inspector of Land Record only measured the suit land and did not measure the land of the Respondent/Defendant. It is elementary that unless both the lands are measured, whether the adjoining owner has encroached upon the property of the other, cannot be determined.

5. The learned Counsel for the Appellant submitted that if that was so, the Court should have appoint the another Surveyor and directed for fresh measurement. He submitted that because the Surveyor did not measure both the lands, the Appellant should not made to suffer and it was the duty of the Respondent/Defendant to

ask for measurement. Both these submissions cannot be accepted. It is the Plaintiff who was seeking removal of encroachment. If the trial court had found that the Surveyor had not carried out proper survey and had rendered a finding against the Appellant, at least in First Appeal the Appellant could have asked for fresh measurement, but it was not done.

6. The learned District Judge has also observed that it was a case of the Appellant that he was a purchaser of the suit land Gat No. 342 to the extent of 8 Ana share, but the Appellant had failed to identify of which area he had become the owner. Both the courts have also considered the evidence of the neighbour regarding the existence of the road and the encroachment. The contentions advanced by the learned Counsel for the Appellant are of raising question of facts. No question of law is involved in the Appeal.

7. The Second Appeal is accordingly dismissed.

8. As the Second Appeal is dismissed, nothing survives in the Civil Application. Hence, the Civil Application stands disposed of accordingly.

(N.M. Jamdar, J.)