

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

Second Appeal No.729/2017

Smt. Shantabai Kanhaiyalal Jinde

Vs.

Sau.Vatsalabai w/o Vishwanath Raipure

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

Court's or Judge's Orders

Shri Shri A.B.Mirza,, Advocate for appellant.
Shri J.B.Gandhi, Advocoate for respondent sole.

CORAM : A.S.CHANDURKAR, J.

DATED : 21.09.2018

The appellant is the original defendant, who is aggrieved by the judgment of the appellate Court decreeing the suit for possession as filed by the respondent herein.

According to the original plaintiff, she is the owner of the land admeasuring 61 R from field Survey No. 18/2. That land was purchased on 29.03.1993. As the plaintiff found that she was in possession of the lessor area, notice was issued to the adjacent owners and the said land was measured. It was found that the defendant, who was the owner of the adjacent land, had encroached on the area to the extent of 7 R. On that basis, a suit was filed for seeking possession of the 7 R land. The defendant denied having committed any encroachment and claimed that by virtue of having purchased the land admeasuring 2 Hectares and 48 R, she was in possession thereof. The trial Court directed joint measurement of both the lands and in that measurement, it was found that the defendant had encroached upon 8 R land. The suit was, thereafter, amended to that extent. The trial Court dismissed the suit by holding that the encroachment was not duly proved. The appellate Court however allowed the appeal and decreed the suit.

Shri A.B.Mirza, learned counsel for the appellant submitted that the measurement that was carried out by preparing a map at Exhibit 15 did not indicate the actual encroachment committed by the defendant. Merely by calculating the total area of both the lands, it was concluded that the defendant had committed the said encroachment. It was thus submitted that the trial Court had rightly dismissed the suit and the said judgment was liable to be maintained.

Shri J. B.Gandhi, learned counsel for the respondent, supported the impugned judgment. According to him, when the joint measurement was carried out, the defendant and his representatives were present and no objection was raised to that report by the defendant. Hence, at this stage those aspects cannot be considered.

On hearing learned counsel for the parties and on perusing the map at Exhibit 15, it is seen that the same has been prepared by Taluka Inspector of Land Records after giving due notice to both the parties. As per the said measurement, the area in possession of the defendant was to the extent of 2 hectares 48 R, while the plaintiff was in possession of 53 R. It is not disputed that Survey No.18/2 pertains only to the aforesaid two lands which totally measured 3 Hectares. In absence of any objection being raised to the report and Map at Exhibit 15, no fault could be found with the judgment of the appellate Court in passing decree with regard to the possession of 8 R land.

The second appeal does not give rise to any substantial question of law. The same is dismissed. No costs.

JUDGE

