

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 327 OF 2019

Malhari Tukaram Tambve	.. Appellant
Vs.	
Dashrath Gosu Kale	.. Respondent

Mr.Prabhakar M.Jadhav, for the Appellant.

CORAM : M.S.KARNIK, J.

DATE : 14th OCTOBER, 2019

P.C. :

Heard learned Counsel for the appellant. The appellant is the original defendant. The respondent – plaintiff filed the Suit for removal of encroachment to the extent of 13 R. The trial Court decreed the Suit and declared that there is encroachment to the extent of 12 R.

2. Learned Counsel for the appellant assailing the impugned judgment and decree contended that the measurement is carried out by T.I.L.R. only on the basis of

Phalni Map. It is the contention of the learned Counsel for the appellant that in such a Suit, the trial Court should have got the measurement carried out by ordering the superior Revenue Officer to carry out nimtana survey. He would further submit that though there are concurrent findings, but the Courts below are not justified in concluding that there is encroachment only on the basis of Phalni Map.

3. I have gone through the findings recorded by the Courts below. The Suit is for removal of encroachment to the extent of 13R. The trial Court has decreed the Suit for removal of encroachment to the extent of 12R. Both the Courts below on the basis of the evidence on record and after appreciating evidence of P.W.1- T.I.L.R. have come to the conclusion that measurements have been carried out in accordance with the procedure laid down. The Courts below on the basis of the evidence of P. W.1 who is T.I.L.R. concluded that the measurement can be carried out on the basis of Phalni Map. On the basis of all these materials, the Courts below concluded that

there is encroachment to the extent of 12R. When there is ample material & cogent evidence on record to indicate that there is encroachment to the extent of 12R, in my opinion, contention of the learned Counsel for the appellant that there should have been further nimtana measurement is not tenable. The present Appeal does not involve any substantial question of law. The Courts below have concurrently found that there is encroachment to the extent of 12R. I do not find any perversity with the findings recorded by the Courts below which is on the basis of the evidence on record. Second Appeal is dismissed.

(M.S.KARNIK, J.)