

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

**SECOND APPEAL NO.531 OF 2019
WITH
CIVIL APPLICATION NO.600 2017**

Dilip Gangaram Kadam

... Appellant
(Org. Deft.)

Vs

Ramesh Kondiba Dalvi and Ors.

... Respondents
(Org. Plffs)

...

Mr. Nitin P. Deshpande for the Appellant.

Mr. Prabhanjan Gujar for the Respondent Nos.2B, 2C, 2E, 1, 2A
and 2D.

CORAM : SANDEEP K. SHINDE J.

DATE : SEPTEMBER 17, 2019

P.C. :

The appellant was the defendant in Regular Civil Suit No.106 of 2005 instituted by the respondents herein. The suit was for removal of encroachment and for possession of the encroached land admeasuring 16 sq.mtrs.

2 The Trial Court dismissed the suit; however, the Appellate Court allowed the the Regular Civil Appeal No.149 of 2014 and the suit was decreed.

3 Aggrieved by the judgment and decree passed in the Regular Civil Appeal No.149 of 2014, original defendant has preferred this Second Appeal.

4 Heard learned counsel appearing for the respective parties.

5 It may be stated that, the Respondents herein had filed one Regular Civil Suit No.253 of 2002 (First Suit), seeking a declaration of easementary rights wherein easementary rights apparent to the land was measured at the instance of the appellant herein, who was the defendant in the First Suit. A measurement report/map bearing No.29/02 was filed in the First Suit.

6 Measurement map bearing No.29/2 shows the respondents herein had encroached over the appellant's land to the extent of 25R. It also shows the appellant had encroached over the respondents' land to the extent of 16 sq.mtrs. This map-report is not disputed by the either parties.

7 Appellant herein, taking recourse to the measurement map no.29/2 had filed suit being Regular Civil Suit No.45 of 2005 ('Second Suit' for short) for removal of encroachment by the respondents herein and for possession of the encroached area. The second suit was decreed.

8 The respondents herein (plaintiffs), relying on the measurement map no.29/2, thus, filed Regular Civil Suit No.106 of 2005 ('Suit in Question') for removal of encroachment made by the appellant (defendant) and for possession of 16 sq.mtrs.

9 The Trial Court dismissed the suit; however, the Appellate Court relying on the map no.29/2, decreed the suit and as such, measurement map has been treated as part and parcel of the decree.

10 Thus, facts of the case show that on the basis of measurement map no.29/2, appellant's Regular Civil Suit No.45 of 2005 (Second Suit) was decreed and, therefore, he is estopped from disputing measurement map no.29/2, on the basis of which respondents' suit has been decreed.

11 Appeal, therefore, does not give rise to any substantial
question of law. Judgment and decree passed by the Appellate Court
is consistent with the evidence on record. Nothing is pointed out to
indicate that the decree is perverse or de-horse to the evidence on
record.

12 No interference is, therefore, called for. Appeal is
dismissed.

13 Civil Application is, accordingly, disposed of.

(SANDEEP K. SHINDE, J.)