

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

**INTERIM APPLICATION NO. 1 OF 2019
IN
REJECTED CASE NO. 2298 OF 2016**

Mr. Dattatray Narayan Raut

.... Applicant
(Ori. defendant)

Vs.

1. Mr. Jayesh Madhukar Raut

2. Mrs. Shakuntala Madhukar Raut

.... Respondents

Mr. J.A. Udaipuri a/w Ms. Shraddha Jadhav i/by Uadipuri & Co. for
Applicant

Ms. Neeta Karnik for Respondents.

Coram : NITIN W. SAMBRE, J.

Date : 17th December 2019

P.C.:

1. This is an application for restoration. There is delay of more than 3 years in moving an application for restoration. The cause cited is the default committed by the lawyer in attending the matter on the given date.

2. Ms. Karnik, learned counsel for the respondent graciously extend the consent, as the lawyer for the applicant has accepted his

bonafide mistake in failing to mark the matter. As such delay stands condoned. The appeal is restored to file. Application is allowed.

(NITIN W. SAMBRE, J.)

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

**SECOND APPEAL (L) NO. 25704 OF 2012
(REJECTED CASE NO.2298 OF 2016)**

Mr. Dattatray Narayan Raut Appellant

Vs.

1. Mr. Jayesh Madhukar Raut
2. Mrs. Shakuntala Madhukar Raut Respondents

Mr. J.A. Udaipuri a/w Ms. Shraddha Jadhav i/by Uadipuri & Co. for
Appellant.
Ms. Neeta Karnik for Respondents.

**Coram : NITIN W. SAMBRE, J.
Date : 17th December 2019**

P.C.:

1. Heard.
2. The learned Joint Civil Judge, Junior Division, Palghar decreed the suit being Regular Civil Suit No.50 of 2005, which was for removal of encroachment and for injunction.
3. The said judgment came to be confirmed in Civil Appeal No. 2 of 2008, as the appellant's appeal came to be dismissed on 9th August, 2011 by the learned District Judge-1 at Palghar.

4. The question of law, which is sought to be canvassed by the learned counsel for the appellant-defendant is whether Exhibit 103, the report of TILR, PW-3 Sadashiv Bandhekar is appropriately analysed.

5. Learned counsel relied upon the findings recorded by the trial court so as to claim that the measurement and evidence of the said witness PW-3 is incorrectly appreciated.

6. Learned counsel for the respondent-plaintiff, Ms. Karnik supports the judgment.

7. Considered rival submission.

8. PW-3 Sadashiv has proved the map drawn by him at Exhibit 103. He prepared the said map, pursuant to the order passed, whereby said PW-3 was appointed as Court Commissioner. The evidence of PW-3 at Exhibit 102 proved the map at Exhibit 103 and the deposition given by him that the lavatory constructed by the appellant-defendant is in survey no. 764, Hissa no.4 belonging to the plaintiff. He ascertained the same by demarcating the boundaries of Survey No. 764/1 and 764/4.

9. In the aforesaid background, the concurrent findings recorded by both the Courts below on the basis of appreciation of fact and evidence does not warrant any interference. The appeal as such fails. Dismissed.

10. Learned counsel for the applicant at this stage seeks protection for four weeks. Learned counsel for the respondent opposed the same.

11. In view of the concurrent findings recorded by both the Courts below, this Court rejected the prayer made by the learned counsel for the applicant of maintaining status quo.

(NITIN W. SAMBRE, J.)