

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

**SECOND APPEAL NO.348 OF 2016
WITH
CIVIL APPLICATION NO.671 OF 2016**

Baban Punja Nikam @ Nikumbh ... Appellant

Vs

Vikram Roopchand Jadhav ... Respondent

...

Mr. Tushar N. Sonawane for the Appellant.

Mr. Avanti Inamdar I/by Mr. R.N.Gite for the Respondent.

CORAM : SANDEEP K. SHINDE J.

DATE : 18 FEBRUARY, 2019

P.C. :

Heard learned counsel for parties.

2 Defendant in Regular Civil Suit No.122 of 2000 has preferred this appeal against the concurrent findings of the fact. I will refer the parties as per their status in the trial Court.

3 The suit was filed for the decree of possession of encroached land admeasuring 60 R. Plaintiff is owner of Gat No.246 and the defendant of 245. The plaintiff alleged that the defendant

encroached over the gat no.246 to the extent of 60 R and thus, filed suit to recover the said encroached land. The Trial Court declined to rely on the evidence of surveyor for the reasons stated in paragraph 10 of the judgment and thus, on this count, the suit was dismissed. The Appellate Court, however, found evidence of the surveyor was reliable and thus, decreed the suit by the judgment and order dated 9th July, 2015. It is against the decree passed in Regular Civil Appeal No.98 of 2011, the defendant has preferred this Second Appeal.

4 The only issue is whether finding of the Appellate Court is perverse, being not consistent with the evidence of surveyor.

5 I have gone through the evidence of surveyor. This witness was attached to the office of Taluka Inspector Land Records at Nandgaon and his office had received an application from plaintiff for measuring boundaries of Gat Nos.245 and 246. After issuing notices, he measured the land on 31st May, 1999 in the presence of plaintiff and defendant. Measurement revealed, that the holder of

the Gat No.245, i.e., defendant, has encroached on land Gat No.246 to the extent of 60 R.

6 The learned counsel for the appellant submitted that while measuring the subject lands, surveyor was neither carrying with him original land records nor considered the fact that the plaintiff had sold part of Gat No.246 to Daulat Nana Shelar, Trimbak, Ramchandra Jadhav and Rangnath Sonu Dhumal. It is contended that though the village road passes from Gat No.246, the same was not shown in the map. It is further contended that surveyor did not measure barren land out of Gat No.246 and 245 and thus surveyor map was not reliable. In cross-examination, he was suggested that he did not visit site and he drew the map in the office. In my view though Surveyor has not shown road allegedly passing through the gat no.246, it hardly matters in-as-much as surveyor had measured the boundaries of lands in question in the presence of the parties. His evidence shows before visiting the site for measurement, he had verified the records of the subject land. The

other suggestions were denied by him. Thus, evidence of surveyor was reliable and this finding of fact recorded by the Appellate Court is consistent with the evidence.

7 In the case of **Manikrao Ramji Chawake v. Ashok Ambadas Gawande and Vithal Dalpat Patil**¹, it is held that the measurement of area of the land and boundaries thereof are settled by the authentic map prepared in presence of the parties when joint measurements are carried out by the officials from the department of Taluka Inspector Land Records, legal position in this regard is settled as the parties are required to assist, Government official concerned from the department of T.I.L.R. and D.I.L.R. In such dispute, map is required to be drawn by the officials from the department of T.I.L.R. and the Court is required to decide the real controversy finally after appreciating further evidence led by the parties and of the surveyor when the map is drawn by the competent official from the T.I.L.R. or D.I.L.R. The trial Court may certainly presume authenticity thereof under Section 83 of the Indian

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Evidence Act, 1872 regarding accuracy of such map or plan produced on record in order to determine factum of encroachment and then may pass necessary final order to set at rest real controversy between the parties regarding such boundary dispute.

8 In the case in hand, surveyor has measured the land in the presence of the plaintiff and defendant and found that the defendant had encroached over the plaintiff's land to the extent of 60R. In my view, evidence of surveyor is reliable and merely because he did not show area of road which was allegedly passing through Gat No.246 that itself would not render the map inadmissible.

. Finding recorded by the Appellate Court is consistent with the evidence and it is not perverse. It cannot be ignored that the plaintiff had gone to the extent of suggesting to the surveyor that he did not visit the site for measuring land. Thus, in my view, finding recorded by the Appellate Court being not perverse, it requires no interference. Appeal does not give rise to substantial question of law.

The Second Appeal is, accordingly, dismissed and the civil application therein is disposed of accordingly.

9 The learned counsel for the appellant submits that pending this appeal, impugned decree was stayed and, therefore, same protection may be continued for the period of four weeks. In view of this execution of decree passed in Civil Appeal No.98 of 2011 by the Court of Ad-hoc District Judge-1, Malegaon, District: Nashik is stayed for a period of four weeks.

(SANDEEP K. SHINDE, J.)