

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.121 OF 2019
WITH
CIVIL APPLICATION NO.133 OF 2019**

Shantaram Nimba Roundal ... Appellant
Versus
Sau. Nirmalabai Rajendra Roundal ... Respondent

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Mr. Dilip Bodake a/w Shraddha Pawar for the Appellant.
A.S. Khandeparkar a/w Rajeev D. Gude i/b Khandeparkar & Associates
for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 4 DECEMBER 2019

P. C. :

. Heard learned Counsel for the parties.

2 This second appeal challenges concurrent judgments and decrees passed by the courts below in a suit filed by the Respondent. The Respondent claimed to be the owner of Gat No.210, admeasuring 1 H 10 R at Village Navi Bej. Tal Kalvan, whereas the Appellant (original defendant) was the owner of Gat No.211, adjacent to Gat No.210, admeasuring 1 H 44 R. The land of the defendant (Gat No.211) was situated on the northern side of the suit property (Gat No.210). By a registered sale deed dated 20 October 1986, the husband of the plaintiff is claimed to have sold the land admeasuring 15R from Gut

No.210, leaving 95 R in the ownership of the present plaintiff. The plaintiff, in the first place, challenged this particular sale deed as illegal, null and void and sought a declaration in that behalf along with recovery of possession of 15 R land covered by the sale deed. Secondly, it was the case of the Plaintiff that in addition to this area of 15 R, another area of 10 R forming part of Gut No.210 was encroached upon by the Defendant. Accordingly, in all possession was sought of 25 R of land in possession of the defendant. Both the trial court and the appeal court rejected the plaintiff's case so far as it related to 15 R land covered by the sale deed of 20 October 1986. The matter has rested there, since this part of the order has not been carried by the plaintiff in any further challenge. The controversy in the present second appeal pertains to the partial decree passed by both courts below in respect of the other encroached land. Originally this land was said to be of 10 R. It was the case of the plaintiff that during the pendency of the suit, further land came to be encroached upon by the defendant, the total encroached land thus aggregating to 45 R. The plaint was accordingly amended. The defendant was allowed to file an additional written statement. The defendant did so. It appears that a court commissioner was thereafter appointed by the trial court to measure the suit property, namely, Gat No.210. Subsequently, however, the report of the court commissioner was disregarded by the court, since the adjoining property, in particular Gat No.211, which was of the ownership and in possession of the defendant, was not measured. The court, therefore, issued a fresh commission for measurement of both properties. Based on this fresh

commission, measurements were taken by the court commissioner, who was Taluka Inspector of Land Record (TILR) and a report was made to a court. The TILR was thereafter examined and cross examined by the parties and based on his evidence, the trial court came to a conclusion that total area of 25R from out of Gat No.210 was encroached upon by the defendant and accordingly made a declaration and ordered recovery of possession. This order was carried by the defendant to the lower appellate court, who by its impugned order dated 24 September 2018, upheld the order of the trial court and maintained the decree. That is how the present second appeal has been preferred.

3 It is submitted by learned Counsel for the Appellant (original defendant) that the survey conducted by the TILR was not in accordance with applicable rules. It is submitted that the initial fixed point in accordance with the original map was not fixed. Alternatively, it is submitted that the point as between Gat Nos.210 and 209, which was taken up as starting point for survey, was not in accordance with any particular map, but was merely indicated by the Plaintiff herself. Secondly, it is pointed out that examination of the TILR shows that there were important admissions, which appear to have been overlooked by both courts below. This court, sitting as a court of second appeal, is merely concerned with substantial question/s of law arising in the matter. The orders of the courts below are clearly within jurisdiction. There is no infraction of law or perversity in the orders. If one has regard to the evidence of the TILR

and its assessment by both courts below, it is clear that the orders of the courts below are supported by some evidence. The courts have taken into account all relevant and germane materials and circumstances; and have not disregarded any relevant or germane material or circumstance. The conclusions are clearly possible conclusions and do not exhibit either a finding based no evidence or a finding that no reasonable person duly instructed in law could have arrived at.

4 There is accordingly no merit in the second appeal. No substantial question of law arises for consideration of this court.

5 The second appeal is, accordingly, dismissed.

6 In view of the dismissal of the second appeal, the civil application does not survive and is disposed of.

7 Learned Counsel for the Appellant seeks stay of this order. Two courts below having come to concurrent findings on an issue, which is essentially an issue of fact, and this court having heard the parties comprehensively and dismissed the second appeal, finding no substance in it, there is no question of any stay. The application is rejected.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

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