

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO.56/2019  
Smt.Raibai wd/o Maroti Parsutkar and ors

..VS..

Smt.Bainabai wd/o Nilkanth Janve (since deceased) thr. her Legal Heirs  
Gangadhar s/o Nilkanth Janve and ors

.....  
Office Notes, Office Memoranda of Coram,  
appearances, Court orders or directions  
and Registrar's orders

Court's or Judge's Order

.....  
Shri Rohit Joshi, Counsel for the Appellants.

**CORAM : V.M.DESHPANDE, J.**  
**DATED : JUNE 14, 2019.**

1. Heard learned counsel for the appellants.
2. The appellants, who are legal representatives of original plaintiff-Maroti s/o Adku Parsutkar, are challenging judgment and decree dated 16.9.2017 passed by learned 3<sup>rd</sup> District Judge, Chandrapur in Regular Civil Appeal No.203/2012 whereby learned Judge of the Lower Appellate Court partly allowed the appeal, filed on behalf of the defendant whose legal representatives are the respondents herein, modifying judgment and decree dated 20.4.2012 passed by learned Civil Judge Junior Division, Ballapur in Regular Civil No.157/2008 (Old Regular Civil Suit No.3/2005 , as under:

*“A] The suit is partly decreed.  
B] Plaintiff and defendants are declared as joint owners of the suit Plot No.269 being a common approach way to the other plots of their respective ownerships.*

*C] The suit for mandatory injunction is dismissed.*

*D] Both plaintiff and defendants are hereby permanently restrained from committing any construction, encroachment or building anything upon the suit plot No.269 by themselves or anybody claiming through them in manner whatsoever.”*

3. While passing the aforesaid decree, learned Judge of the Lower Appellate Court found that the plaintiff moved an application Exhibit 59 for appointment of a Commissioner and the same was allowed by learned Judge of the Trial Court. There is no dispute before this Court that as per directions of the Court below the Court Commissioner measured land on 20.4.2011 and submitted a map (Exhibit 63) showing no encroachment alleged to have been made by the defendant.

4. Since in this appeal the appellants' challenge only to the extent that learned Judge of the Lower Appellate Court ought to have recorded finding that the defendants have made encroachment, cannot be entertained in view of the fact that Exhibit 63 shows no encroachment and the plaintiffs did not challenge the said map Exhibit 63.

5. In that view of the matter, there is no merit in the second appeal. The second appeal is dismissed and disposed of accordingly. No costs.

**JUDGE**

!! BRW !!

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