

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

SECOND APPEAL 577 OF 2017

(Shriram Onkar Awatade (dead)thr LRS & ors..vs.. Pandurang Rambhau Ingle and ors)

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

Court's or Judge's orders.

Mr. A.B. Mirza, counsel for appellants.

Mr. A. Thakur h/f Shri R.L. Khapre, counsel for respondents 1 to 3.

CORAM: ROHIT B. DEO, J.

DATE: 22th APRIL, 2019.

The defendants 3 and 4 are in appeal under section 100 of the Code of Civil Procedure questioning the judgment and decree dated 24.9.2015 in Regular Civil Appeal 98 of 2005, by and under which, the appeal is partly allowed and the Regular Civil Suit 176 of 1995 brought by the plaintiffs for possession is partly decreed.

2 The trial Court dismissed the suit holding that the plaintiffs failed to prove the encroachment.

3 The first appellate Court appointed cadastral surveyor in exercise of power under Order 26 Rule 9 of the Civil Procedure Code who measured the suit property and concluded that 5 Gunthas of land owned by the plaintiffs is encroached upon by the defendants.

4 Mr. A.B. Mirza, the learned counsel for the

defendants 3 and 4 would submit, relying on various decisions of this Court that the measurement is not conducted in accordance with guidelines issued by this Court. I am not inclined to countenance the said submission since the cadastral surveyor is not cross examined. Moreover, the defendants 3 and 4 did not object to the report of the Court Commissioner. The finding recorded by the first appellate Court on the basis of the measurement carried by the cadastral surveyor is a pure finding of fact and this Court would be loath to interfere therewith in exercise of jurisdiction under section 100 of the Code of Civil Procedure.

5 No question of law much less substantial question of law is involved in the appeal which is dismissed with no order as to cost.

JUDGE