

BDP-SPS

Bharat
D.
Pandit
Digitally signed
by Bharat D.
Pandit
DN: cn=Bharat D.
Pandit, o=, ou=, email=bharat.d.pandit@bdp-mps.com

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
SECOND APPEAL NO.434 OF 2016**

Vasant Nabhaji Domade Appellant.
V/s
Balu Shankar Barke and Anr. Respondents.

Mr. Sachin Gite for the Appellant.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 4, 2020

P.C.:-

1] Suit for declaration and removal of encroachment came to be decreed against the Appellant/Defendant, which was confirmed in first appeal. As such, this second appeal.

2] The questions of law which are sought to be agitated by Shri Gite are “(a) whether the Court Commissioner appointed pursuant to provisions of Order XXVI Rule 9 of CPC has established encroachment in absence of measurement of land of the Appellant/Defendant?” and “(b) whether suit was maintainable in absence of plaint map pursuant to provisions of Order VII Rule 3 of CPC?”

3] With the assistance of learned Counsel for the Appellant, I have

looked into the evidence and findings recorded.

4] Apart from the fact that there are concurrent findings against the present Appellant, evidence of Cadastral Surveyor has been appreciated by both the courts below. Appellant at this stage claims that land of the Appellant was not measured. However, this Court is required to appreciate that when the Court Commissioner was appointed for carrying out measurement, it was the duty of the Appellant to be diligent in getting his land measured and, if required, by moving the Court, which he has failed to.

5] Appellant, as such, has tried to take benefit of his own defaults of not getting the land measured during the course of decision of the suit.

6] Apart from above, shortfall, as claimed pursuant to provisions of Order VII Rule 3 of CPC, was already cured. No substantial question of law is involved. Appeal lacks merit. Same stands dismissed.

(NITIN W. SAMBRE, J.)