

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

**SECOND APPEAL (ST) NO. 30988 OF 2017**

Sou. Ambika Dnyandeo Shirke ... Appellant

V/s.

Shri Mahadeorao Narayan Pawar  
(Deceased through his legal heirs)

1. Shri Ramesh Mahadeorao Pawar & Ors. ... Respondents

...

Mr. Abhijit P. Kulkarni, for the Appellant.

Mr. Milind Deshmukh for the Respondent Nos. 1 to 4 & 6.

**CORAM: SMT. SADHANA S. JADHAV, J.**

**DATED : 21<sup>st</sup> JANUARY, 2020.**

**P.C:-**

1. The appellant herein was the plaintiff in Regular Civil Suit No. 64 of 2003. The prayer was for simplicitor injunction. There was a boundary dispute between the plaintiff and the defendant. At the time of institution of the suit or thereafter, there was no prayer made for getting the land measured and demarcating the boundaries between two lands. It was an

*Sonali Patil*

apprehension on oral submission that the original defendant had changed the boundary during the night and therefore, the plaintiff was constrained to file the suit for simplicitor injunction. The boundaries were allegedly damaged on 14<sup>th</sup> November, 2001.

2. After the dismissal of the suit, plaintiff had filed Regular Civil Suit No.25 of 2013. The learned Appellate Court had observed in paragraph No.16 as follows:-

*“Unless, the common boundary between the suit land of the plaintiff and the defendants is fixed, the dispute between them may not be resolved completely. The plaintiff appears to have taken shortcut method by filing simplicitor suit for injunction without there being actual cause of action.”*

3. The learned Counsel for the appellant submits that the appellant has now filed Regular Civil Suit No. 250 of 2018 in the Court of Joint Civil Judge, Junior Division at Baramati, that Court has been pleased to issue summons. The prayer in the said suit is for demarcating the boundaries and the declaration

thereto. It cannot be said that the said suit would be hit by the principle of res-judicata, since the earlier suit was filed for simplicitor injunction which is a distinct prayer. In view of institution of said suit, the learned Counsel for the appellant upon instructions, seeks liberty to withdraw the present Second Appeal in order to prosecute the Regular Civil Suit No. 250 of 2018, which can be decided on its own merits.

4. The learned Trial Court shall not be influenced by the withdrawal of the present Second Appeal, as the liberty is granted to the appellant to prosecute the said Civil Suit seeking demarcation and declaration. Second Appeal stands disposed of as withdrawn.

**(SMT. SADHANA S. JADHAV, J.)**