

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.249 OF 2016
WITH
CIVIL APPLICATION NO.464 OF 2016**

Ashok Pandurang Desai	...	Appellant
versus		
Ananda Ramchandra Koshti alias Davari	...	Respondent

Mr.Chintan Shah i/b Monica Kshirsagar
for the Appellant/Applicant.

Mr.S.P.Dalvi for the Respondent.

CORAM :- SMT.BHARATI DANGRE, J.

DATE :- FEBRUARY 26, 2020

P.C. :-

1. A dispute about minuscule land of less than a square metre and to be precise 0.69 square metre is before me, exactly after a decade when a Regular Civil Suit was filed before the learned Joint Civil Judge (Junior Division), Kavathe-Mahankal.

2. On 30th January, 2018, realising the trivial nature of dispute between the parties, this Court had suggested a process of mediation, as an attempt to resolve the same. Unfortunately, the said process resulted in failure and that is how the Second Appeal reached this Court for hearing. By consent of the parties, the Appeal is heard finally.

3. The plaintiff-Ananda Ramchandra Koshti-owner and possessor of City Survey No.1294 admeasuring 20 square metres, constructed an RCC building on the said ancestral property. The defendant is concerned with a piece of land which is located towards south side of the property and the discord arose when the defendant demolished his old building standing on City Survey No. 1298 and started a new construction. According to the defendant, he has left the required portion of land between the two buildings in terms of the necessary norms. However, the plaintiff denies the same. On a joint measurement being carried out by one Mr. Sarjerao/Surveyor, the land was measured by adopting the prescribed scale of measurement. Statement of both the parties came to be recorded and what surfaced from this survey was, 0.69 square metre area is located towards south side of plaintiff's land and towards north side of defendant's land.

4. It is this portion of land, which according to the plaintiff, has been encroached by the defendant which constrained him to file a Regular Civil Suit in the Court of Joint Civil Judge, Junior Division which is numbered as R.C.S.No.31/2010 seeking a perpetual injunction restraining the defendant from encroaching on his City Survey number and further opening door or windows towards south wall of the defendant and from creating

easementary right. A prayer in the nature of mandatory injunction was also sought for.

5. While settling the Issues, whether the plaintiff is in lawful possession of the property and on the issue as to whether the defendant obstructed or threatened to obstruct the plaintiff's possession, the First Court answered both the issues in the affirmative. By recording a clear finding that the defendant had made an encroachment to the extent of 0.69 square metre from south side of the suit property, the First Court held that the plaintiff is entitled for perpetual injunction in terms of Section 38 of the Specific Relief Act, 1963 as regards the obstruction only. By judgment dated 29th July, 2013, the suit was decreed. The defendant was directed to remove his construction over 0.69 Square metre area from City Survey No.1294 and more particularly described in the measurement map.

6. Being unsuccessful, the appellant moved the District Court Sangli by filing Regular Civil Appeal, which came to be numbered as RCA No.395/2013. The Appellate Court concurred with the finding of the First Court and relied upon the report of the TILR and rejected the contention that the measurement was not carried out in the presence of the parties particularly, when the defendant has admitted this fact in the evidence. The Court

further relied upon the report of the Court Commissioner, which formed a part of the record, and by holding that proper procedure was followed at the time of measurement, it refused to interfere in the judgment impugned before it and upheld the same vide judgment dated 10th September, 2015.

7. Perusal of the judgments passed by the Courts below, in my considered opinion, do not give rise to any substantial question of law and, therefore, none is contained in the memorandum of appeal. The Courts below, based on the report of the Land Record Officer (Commissioner's Report) and the report of the TILR placed before it, acting as Court Commissioner, have granted the relief in favour of the plaintiff, since the measurements were not in dispute and since the report of the Commissioner has carved out a portion of 0.69 square metre area from City Survey No.1294, the First Court was justified in granting perpetual injunction in favour of the plaintiff exactly within the parameters of Section 38 of the Specific Relief Act in relation to obstruction only. No illegality or perversity on facts is to be found in the sense that the material which has been produced before the Courts below has been properly appreciated in the context in which it was placed before them. The defendant who entered the witness box with his witness-Baburao Ganpati deposed as to how erroneously the

Commissioner of plaintiff prepared the report without disclosing exact encroachment in length and width. On the other hand, the plaintiff and his witness surveyor-Sarjerao Dhobale sufficiently proved that the defendant had encroached on the plaintiff's land.

8. In the absence of any illegality or perversity, there is no reason for this Court to interfere with the said findings. Resultantly, the Second Appeal stands dismissed, and the Judgment and Decree passed by the Court below stands affirmed.

9. In view of the order passed in the Second Appeal, the Civil Application does not survive and stands disposed of accordingly.

(SMT.BHARATI DANGRE, J.)