

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.891 OF 2006

Sudam s/o. Ukha Waghmare,
 Age 50 years, Occu. Labourer,
 R/o. Moglai, Dhule,
 Taluka and District Dhule.

.. Appellant

Versus

Gangubai w/o. Bhikaji Gavali,
 Age 77 years, Occu. Household,
 R/o. Moglai, Dhule, Taluka and
 District Dhule.
 Died through her legal representatives -

1-A. Yamaji s/o. Bhikaji Gavali (Son),
 Age 51 years, Occu. Electrician,

1-B. Tuljaappa s/o. Bhikaji Gavali (Son),
 Age 46 years, Occu. Service,

1-C. Janabai w/o. Mahadu Gavali (Daughter),
 Age 49 years, Occu. Household work,

1-D. Dhondabai w/o. Yamaji Gavali,
 Age 46 years, Occu. Household,

1-A to 1-D are R/o. Lane No. 4
 Ramapati Chowk, Moglai, Dhule,
 Taluka and District Dhule.

.. Respondents

...

Mr. R. M. Deshmukh, Advocate for appellant
 Mr. B. R. Waramaa, Advocate for respondents

...

CORAM : ANIL S. KILOR, J.

DATE : 19th MARCH, 2021

JUDGMENT :-

In this appeal, the appellant-plaintiff has questioned the correctness and illegality of the judgment and decree passed by the learned 2nd Ad-hoc Additional District Judge, Dhule, in Civil Appeal No. 23 of 1994 dated 30th June, 2006 to the extent while mentioning the area as regards the possession of the plaintiff, the court has mentioned 30 x 40 ft. in place of 35 x 40 ft. This court was pleased to admit the present appeal vide order dated 18-01-2007 on substantial question of law mentioned in the appeal memo as grounds no. III to VII.

2. The dispute involved in the present matter is in respect of possession over suit land which as per the plaint is 35 x 40 ft. However, after appointing the commissioner by the trial court, his report was filed at Exhibit-25, and after considering the same, though, in the body of judgment the trial court has observed the disputed portion was admeasuring 35 x 40 ft., in the operative part the court has recorded the area as 30 x 40 ft. and to that extent the possession of the plaintiff was protected as regards land city survey no. 3745/1.

3. In the commissioner's report, it has also come on record that, the land in dispute is owned by some third person and not by the plaintiff or the defendant.

4. In the appeal preferred by the defendant, the learned appellate court protected the possession of the plaintiff to the same area i.e. 30 x 40 ft, which is mentioned in the operative part of the trial court.

5. There is no dispute that the plaintiff did not move any application before the trial court for correction of area mentioned in the operative part of the order, however, according to the plaintiff, the said area was wrongly mentioned as 30 x 40 ft. in place of 35 x 40 ft. Even he did not file against the same.

6. In the said back drop, filing of the second appeal and seeking correction of the area mentioned in both the judgments and decrees, of the land in dispute as 35 x 40 ft. in place of 30 x 40 ft. can not be entertained. In the circumstances, I do not find any substantial question of law involved in the present matter. Accordingly, appeal is dismissed. No order as to costs.

(ANIL S. KILOR)
JUDGE