

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL 350 OF 2022
WITH
CIVIL APPLICATION NO. 8620 OF 2022**

Ramesh Ram Burbure,
Age. 45 years, Occ. Agriculture,
R/o. Mali Galli, Latur,
Tq. And Dist. Latur.

....Appellant
(Orig. Deft No. 2)

Versus

1. Raghunath Bapurao Mhetre,
Age. 65 years, Occ. Agriculture,
R/o. Mali Galli, Latur,
Tq. And Dist. Latur.

2. Satrajeet Govindrao Burbure,
Age. 54 years, Occ. Agriculture,
R/o. Mali Galli, Latur,
Tq. And Dist. Latur.

....Respondents
(Orig. Pltff & Deft. No.1)

Advocate for Appellant : Mr. Kuldeep Patil h/f. Mr. S. S.
Chaudhari

CORAM : RAJESH S. PATIL, J.

Judgment reserved on : 22.12.2022

Judgment pronounced on : 23.12.2022

JUDGMENT :

1. The Second Appeal is filed against concurrent findings of both the Courts below, by original defendant No. 2.

2. The respondent No. 1 herein is the original plaintiff in the suit for possession filed in the lower Court. The plaintiff filed suit for possession of 6 Ares encroached portion of land against defendant No. 2 (appellant herein) and defendant No. 1 who were his neighbors. It is the case of the plaintiff that he is the owner and possessor of 73 Ares land. Mutation entry to that effect is recorded in his name. It is, further, case of the plaintiff that the land of the plaintiff is Survey No. 297. Defendant No. 1 is the owner of land Survey No. 299 and defendant No. 2 is the owner of land Survey No. 298. There was a common bandh of South – North direction between the plaintiff and defendants. It is the further case of the plaintiff that somewhere in the month of May 2002, the defendants removed the common bandh and both of them encroached upon the land of the plaintiff to the extent of 6 Ares land i.e. 3 Ares land by each of the defendants. The plaintiff, thereafter, requested the defendants to remove the encroachment, however, they refused to do so. Therefore, the plaintiff applied to TILR for measurement of his land Survey No. 297. Accordingly, by giving notice TILR measurement land Survey No. 297 on 25.07.2022. Panchnama was drawn, accordingly. Defendant was present at that time. In the measurement, it was revealed that defendants had encroached upon the land of the plaintiff to the extent of 6 Ares. Even after measurement since the defendants refused to surrender

the encroached portion of land, the plaintiff had filed the suit for possession. Defendants appeared in the matter and denied the contention of the plaintiff. Plaintiff examined in all five witnesses including the Measurer and Court Commissioner. Defendants also led their evidence by entering into the witness box.

3. The trial Court considered the evidence of both the parties and the evidence in the form of oral and documentary evidence and after considering both the parties and the oral and documentary evidence, the trial Court by its judgment and order dated 31.03.2015, decreed the suit of the plaintiff and directed the defendants to surrender possession of 6 Ares encroached portion i.e. 3 Ares from each of the defendants. The said decree was challenged by separate Appeals by the defendant Nos. 1 and 2. Both the Appeals were dismissed by the District Court. The present Second Appeal is filed by defendant No. 2 against the concurrent findings of both the Courts below.

4. I have considered both the judgments and heard the counsel for the original defendant No. 2.

5. It can be seen that in order to prove the measurement, the plaintiff had examined one Bapurao Jadhav (P.W. 3) who conducted measurement of Survey No. 297

(plaintiff's land). The said witness also stated that he had issued notice of adjacent owners and had thereafter, conducted the measurement. In the said measurement, he observed that possessor of Survey No. 299 (defendant No. 2 / appellant herein) and Survey No. 298 (defendant No. 1), had encroached upon the land from measurement No. 540/02 (Exh. 50) was also proved. Apart from this, the Court Commissioner Satyawan Suryawanshi (Measurer – PW. 4) had conducted joint measurement of land Survey No. 297 (plaintiff's land), Survey No. 298 (defendant No. 2's land) and Survey No. 299 (defendant No. 2's land/ appellant herein). He has stated that he had issued notice to all the concerned including the appellant herein, he conducted joint measurement of Survey Nos. 297, 298 and 299 on 04.09.2013. He was in possession of original file, village map and original tipan. He further stated that he conducted measurement of the lands with the help of presum machine. From his measurement, it is clear that plaintiff is in possession of 67 Ares land only and it appears that defendant Nos. 1 and 2 had encroached upon the plaintiffs land Survey No. 297 to the extent of 6 ares (3 Ares each). During his evidence, he also proved C-sheet measurement No. 23/2013 (Exh. 73).

6. Considering the evidence of the two persons who measured the suit land and adjacent land, I find no substantial question of law arises and both the Courts below have rightly

decreed the suit of plaintiff.

7. Hence, the present Second Appeal is dismissed.

8. Pending Civil Applications, if any, shall also stand disposed off.

(RAJESH S. PATIL, J.)