

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

936 SECOND APPEAL NO.242 OF 2017
WITH CA/4170/2017 IN SA/242/2017

NAMDEO MOHAN DHUMAL
VERSUS
RUKHMINIBAI JAYWANTRAO SAMRUT AND ANOTHER

...
Advocate for Appellant : Mr. Garud N.C.
Advocate for the respondent nos. 1 and 2 : Mr. N.S. Jaju
...

CORAM : MANGESH S. PATIL, J.

DATE : 15 MARCH 2022

PC :

Heard both sides on the point of admission.

2. The appellant who is the original defendant, has challenged the concurrent findings of the courts below holding that he has encroached over 5 Are portion from the respondents' land and decreeing the suit for possession.

3. It can be seen that though the land was measured by a surveyor PW-2, at the instance of the appellant himself, a fresh measurement was carried out by another surveyor who was examined as PW-3. In his measurement, it was found that the appellant had encroached over 5 Are portion of the respondents' land. It is a matter of record that admittedly, the appellant did not chose to challenge the measurement carried out by PW-3.

4. Even going by the cross-examination of PW-3 conducted on behalf of the appellant, nothing could be brought on record to point out any defect or error committed by him in undertaking the survey. Only a general admission is extracted to the effect that even difference of a decimal has the effect of incorrect measurement to the extent of 4-5 Are. Nowhere any statement could be elicited so as to scientifically question the measurement and the conclusion drawn by him. To repeat, without there being any challenge to such measurement by PW-3, it would not lie in the mouth of appellant now to raise any issue on that count.

5. If at all he was not comfortable with the measurement and its result, the appellant could have, apart from raising the objection, should have gone for superior measurement at the hands of the superiors of the surveyor PW-3. In the absence of which, when both the courts below have reached an objective conclusion relying upon the scientific evidence in the form of measurement carried out by PW-3, who is a surveyor, no substantial question of law arises for determination in this second appeal. Second appeal is dismissed with costs.

6. Pending civil application is disposed of.

[MANGESH S. PATIL]
JUDGE

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