

Pallavi

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

**SECOND APPEAL NO.811 OF 2017
WITH
CIVIL APPLICATION NO.1600 OF 2017**

Shri. Ramesh Kondiba Dalavi and Ors. ... Appellants

Versus

Shri. Dilip Gangaram Kadam ... Respondent

Mr. P.B. Gujar for the Appellants/Applicants.

Mr. Nitin P. Deshpande for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATE : NOVEMBER 29, 2022

P.C.:

1. Heard Mr. Gujar, learned Advocate for the Appellants and Mr. Deshpande, learned Advocate appearing for the Respondent.

2. Mr. Gujar submitted that substantial question of law involved in this Appeal is that both the Courts have misconstrued the map at Exh.39. He submitted that although the map mentions only 0.25 sq. meters, however, the decree for removal of encroachment has been passed with respect to 25 sq. meters.

3. It is admitted position that on the basis of same map i.e. Exh.39, the Appellant has also filed a suit for removal of encroachment by Respondent with respect to 16 sq. meters portion and the Appellant has been granted decree of said 16 sq. meters

which has been confirmed upto this Court and the Appellant has also received possession of said 16 sq. meters portion.

4. The said map has been prepared by Taluka Inspector of Land Records (for short "TILR") and it is as per the scale of 1:500. A bare perusal of the map shows that area of 16 sq. meter which was encroached by the Respondent is smaller than the area which has been shown as 0.25 sq. meter. Admittedly, map is as per the scale and the said map is admitted by both the parties. Thus, it is obvious that said 0.25 sq. meter is mentioned mistakenly in the map which should be 25 sq. meters. Both the Courts have concurrently held that portion which has been encroached by the Appellant is 25 sq. meters. Although in the decree passed by the learned Trial Court again, it is mentioned as 0.25 sq. meters, it is very clear that the decree has been passed in respect of 25 sq. meters as per the said Exh.39 map. Therefore, there is no substance in the Second Appeal and the same is dismissed.

5. In view of dismissal of the Second Appeal, nothing survives in Civil Application and the same is disposed of.

(MADHAV J. JAMDAR, J.)