

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.23/2022

Suresh Eknathrao Kale

...Versus...

Subhash Bhaskarrao Deshmukh and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri P.W. Mirza, Advocate for appellant
Shri V.A. Kothale, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.

DATE : 12/09/2022

1. Heard Shri Mirza, learned counsel for the appellant and Shri Kothale, learned counsel for the respondents. The second appeal challenges the judgment of the learned Appellate Court dated 08/12/2021, whereby the learned Appellate Court has partly allowed the appeal and remanded the matter for conducting joint measurement. After conducting the joint measurement of plot nos.6, 7 and 10 in the layout on Survey no.36/1-C, as a claim is made that the defendant, who is the owner of plot no.10 in the layout on Survey no.36/1-C, has encroached upon plot nos.6 and 7, which are to the western side of his plot in the same layout, which are owned by the plaintiffs. The remand cannot be

questioned for the reason that for determining encroachment, a joint measurement is always necessary. However, what is to be seen from the impugned judgment dated 08/12/2021 is that the remand is ordered only for joint measurement of plot nos.6, 7 and 10 after taking into consideration the permanent boundary marks. The evidence on record of PW 3 – Sunaina Wasantrao Telgote the measurer, indicates that though the office has a measurement sheet of Survey no.36, since the same stands divided into multiple units, of which Survey no.36/1-C is a portion, unless the sub-divisions are determined and in relation to that the location of Survey no.36/1-C is established and in turn the layout is finalized locating plot nos.6, 7 and 10, the question of any encroachment cannot be resolved. The judgment of the learned Appellate Court does not indicate such a course of action.

2. Shri Kothale, learned counsel for the respondents fairly concedes that since the area of Survey no.36/1-C itself has not been determined, it would be necessary to first determine that area and the layout thereupon, so that the location of plot nos.6, 7 and 10 would then be fixed and the area measured. He submits that such a course of action would result in finally deciding the issue fully and effectively.

3. Shri Mirza, learned counsel for the appellant has no objection to such a course being adopted, considering

which, list the matter at the end of the board today.

(AVINASH G. GHAROTE, J.)

Later on :

1. The learned counsels for the parties have filed a joint pursis, on instructions from their respective clients, stating that the measurement of Survey no.36/1-C is necessary for identification of plot nos.6,7 and 10 and therefore both of them consent that the impugned judgment of the First Appellate Court dated 08/12/2021 be modified to that extent.
2. The pursis is taken on record and marked as “X” for the purpose of identification.
3. Since I am not interfering with the impugned judgment in any substantial nature but I am only clarifying the same, in view of the joint pursis, in my considered opinion, the substantial question of law is not required to be framed. In view of joint pursis dated 12/09/2022 the judgment of the learned First Appellate Court shall stand modified with an additional direction, that the land of field Survey no.36/1-C

shall also be measured so as to fix the comparative locations of plot nos.6, 7 and 10 in the layout laid therein in reference to fixed identification mark as per the records of the city survey. The expenses of such measurement shall be borne by the respondents/plaintiffs. The second appeal is accordingly disposed of. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar