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

SECOND APPEAL NO.717 OF 2022
WITH
CIVIL APPLICATION NO. 4724 OF 2022

Shankar Pandurang Hangarge ... Appellant

Versus

Vasant Nivarti Hangarge and others ... Respondents

...
Mr.K.A. Kadam – Advocate for the appellant
Mr. S.V. Natu – Advocate for respondent nos.1 to 3

....
CORAM : GAURI GODSE, J.

DATE : 10th January, 2023

PER COURT :

1. This second appeal is filed for challenging the judgment and decree dated 11th February, 2021 passed by learned District Judge-7, Latur in Regular Civil Appeal No.36 of 2015. The appellant is the original defendant. Respondents had filed Regular Civil Suit No.171 of 2010 for removal of encroachment and possession. The suit was dismissed by judgment and decree dated 30th January, 2015 passed by learned 2nd Joint Civil Judge, Junior Division, Latur. Feeling aggrieved by the dismissal of the suit, original plaintiffs had filed Regular Civil Appeal No.36 of 2015. During pendency of the appeal, the plaintiffs have filed

application for joint measurement of the lands of the plaintiffs and other lands. The said application was allowed and office of Taluka Inspector of Land Records was directed to carry out joint measurement. As per joint measurement, map was produced on record at Exhibit-32. Evidence was recorded in support of the said measurement map. By relying upon said measurement map, learned first appellate court has recorded a finding that there is encroachment on the suit land belonging to the plaintiffs and hence, the appeal filed by the plaintiffs is allowed. By the appellate decree, the suit of the plaintiffs is decreed and defendant i.e. present appellant is directed to hand over the possession of area of 12 R situated towards southern side of land Gat No.307 as shown in the map at Exhibit-26 to the plaintiffs. The map at Exhibit-26 is directed to be treated as part and parcel of the decree.

2. Learned counsel appearing for the appellant submits that learned first appellate court has passed the decree only by relying upon the map at Exhibit-36. He states that learned appellate court has not taken into consideration the fact that the plaintiffs had earlier filed similar suit being Regular Civil Suit No.355 of 2002 and the same was dismissed. Thus, this second appeal requires

consideration as the fact that the present suit is barred by the principles of resjudicata is not considered by the first appellate court. He, therefore, submits that this second appeal involves substantial questions of law and hence requires consideration.

3. Since there was delay in filing the second appeal, at the time of condonation of delay, notice was issued to the respondents and hence they are represented through Advocate. Learned advocate appearing for the respondents/plaintiffs has pointed out that learned appellate court has directed for joint measurement as the issue involved in the suit was with respect to encroachment and it was the grievance of the appellant that during pendency of the suit, the joint measurement was carried out in absence of the appellant. With respect to issue of resjudicata, learned counsel appearing for the respondents submitted that though the suit of the respondents was dismissed by the trial Court, the issue of resjudicata was framed and decided in favour of the respondents/plaintiffs. He, therefore, submits that there is no question of law involved in the second appeal and appeal requires to be dismissed.
4. I have perused the judgments of both the Courts. Issues framed by the learned trial court show that a specific issue was framed as to

whether the suit is barred by the principles of res-judicata. After considering the evidence on record, the trial court has recorded a finding that suit is not barred by principle of res-judicata. Even first appellate Court has recorded a point for consideration with respect to the suit being barred by principles of res-judicata. The first appellate court being the last fact finding court has gone through the evidence on record and recorded finding that the suit is not barred by principle of res-judicata. Learned first appellate court has taken into consideration the necessity for joint measurement of the land belonging to the plaintiffs as well as defendant and the other adjoining lands and has rightly allowed the application of the plaintiffs for joint measurement.

5. The first appellate court has given an opportunity to the parties to lead evidence with respect to the joint measurement carried out by the office of the Taluka Inspector of Land Records. The plaintiffs had adduced their evidence in first appeal by examining the Cadastral Surveyor. So far as appellant is concerned, no evidence is adduced on behalf of appellant and he filed pursis to that effect. After examination of evidence of Cadastral Surveyor and map of joint measurement, the first appellate court has recorded a specific finding in paragraph no.17 of the judgment. It

is specifically held that the appellant is in possession of his own area towards northern side as per fixed boundary shown in the map and is also found to have occupied excess area from the land Gat No.307 and Gat No.308. The first appellate court has specifically recorded that it was not the case of the defendant that excluding the area of 12 R, he was in possession of the less area than the area shown in 7/12 extract of land Gat No.206. The first appellate court has specifically recorded finding that the evidence on record shows that the appellant has occupied the area from the suit land of Gat No.307, which is in excess of his own area. Thus, there is specific finding of fact recorded that excluding the encroached area, the appellant-defendant will remain certainly in possession of his own area. Thus, by properly appreciating the facts with respect to the entitlement of the respective area of the appellant as well as the respondents, the first appellate court has recorded a finding with respect to the encroachment made by the appellant on the respondent's land.

6. I do not find any infirmity in the finding of facts recorded by the first appellate court. There is no substantial question of law involved in the appeal and hence, there is no merit in the second appeal. The second appeal is dismissed. There will be no order as

to cost.

7. Since second appeal is dismissed, the civil application for interim relief will not survive and same is dismissed.

[GAURI GODSE]
JUDGE