

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 459 OF 2019
WITH
CIVIL APPLICATION NO. 9145 OF 2019
IN SA/459/2019

Parubai Sukhdev Raut And Another
VERSUS
Ankush Dattoba Yadav And Others

...
Advocate for Appellants : Mr. K.R. Doke
Advocate for Respondent Nos.1 to 3 : Mr. S.R. Kedar

...

CORAM : S.G. MEHARE, J.

DATED : DECEMBER 18, 2023

PER COURT:-

1. Heard learned counsel for the appellants and learned counsel for the respondents.
2. The appellants were the defendants against whom the suit for removal of encroachment was filed. The suit was of the year 2005. The suit was dismissed for the reason that there was no proper measurement of the encroachment. The Appellate Court remitted the suit to the Trial Court with a direction to appoint Cadastral surveyor as a Court Commissioner. The Cadastral surveyor measured the land following the due procedure of law. He proved the accuracy of the map he prepared. However, the present defendants did not cross-examine the plaintiff and his witnesses and remained absent. The Trial Court appreciating the evidence, decreed the suit. The

defendants preferred the appeal contending that no opportunity was granted to them to cross-examine the plaintiff and his witnesses as well as leading their evidence. This was the substantial ground before the First Appellate Court. The First Appellate Court has recorded the finding that there were no substantial grounds for the appellants/defendants to remain absent and no immediate steps were taken to recall the witnesses. The First Appellate Court did not satisfy that the defendants could not cross-examine the witnesses due to the reason beyond their control. It is also transpired that the lawyer also did not appear in the Court and cross-examined the witnesses.

3. Now, the learned counsel for the appellants submits that by civil application they have produced the medical certificate that restrained them from appearing in the Court. For the first time, this ground is raised. This was not the ground raised before the First Appellate Court. Hence, such ground cannot be considered for the first time in second appeal.

4. Besides the absence of the defendants for cross-examining the material, there is no substantial ground to be considered for admission of the appeal.

5. After having gone through the impugned judgment and decree, the Court did not find any substantial questions of law involved in the appeal. Hence, the appeal stands dismissed at the admission stage.

(3)

6. Civil Application No. 9145 of 2019 stands disposed of.

(S.G. MEHARE, J.)