

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.656 OF 2019
WITH CA/14676/2019 IN SA/656/2019

SATISH SHESHAPPA RAKHEWAR
VERSUS
SULOCHANA SHANTILAL BAKLIWAL AND OTHERS

...
Advocate for Appellant : Mr. Vivek V. Bhavthankar
Advocate for Respondent No.2 : Mr. Rahul G. Joshi
...

CORAM : S. G. MEHARE, J.

DATE : 24-08-2023

PER COURT :-

1. After hearing the learned counsel for the respective parties, it is noticed that the dispute was about the procedure to be followed by the Surveyor.
2. The learned counsel for the appellant would submit that the measurement was not done as provided under Sections 35 and 36 of the Indian Evidence Act and it was done in the absence of public record and procedure referred in Sections 35 and 36 of the Evidence Act.
3. During the course of hearing, a proposal has been placed that the present appellant would apply to the Deputy Superintendent of Land Records for fresh measurement of his and respondents lands including suit land at his expenses. On getting the land measured afresh, if the appellant is found encroacher

over the land of the original plaintiff, he would unconditionally and without challenging the validity of the measurement, deliver the possession of the encroached portion to the respondent/plaintiff.

4. The plaintiff/respondent is agreeable to the above proposal. However, the learned counsel for the respondent/plaintiff suggests that the measurement shall be carried out expeditiously. The appellant shall apply for urgent measurement as per proposal within four weeks from today to the Deputy Superintendent of Land Records or any other concerned authority.

5. The Surveyor shall take care that all the respective parties shall be present at the time of measurement and none of the persons to the appeal shall avoid their presence and prolong the measurement.

6. All the parties to act *bona fide*.

7. Since the proposal emerges for re-measurement, the judgment and order impugned before this Court stand set aside.

8. In view of the above, the appeal stands disposed of. Pending civil application stands disposed of.

(S. G. MEHARE)
JUDGE