

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 744 OF 2013
WITH CA/10844/2023

1. Kundlik s/o Dnyanoba Tidke
Age : 48 years, Occu : Agriculture,
R/o Bhogalwadi, Tq. Dharur,
District Beed.

2. Ashruba s/o Keshav Tidke
Age : 40 years, Occu : Agriculture,
R/o as above.

..Appellants

Versus

1. Rama s/o Tatyaba Tidke
Age : 53 years, Occu : Agriculture,
R/o. Bhogalwadi, Tq. Dharur,
District Beed.

2. Mahadeo s/o Anna Munde
Age : 58 years, Occu : Agriculture,
R/o as above.

..Respondents

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Advocate for Appellants : Mr. M.B. Sandanshiv
Advocate for Respondent No.2 : Mr. V.P. Sawant

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CORAM : S.G. MEHARE, J.

DATED : DECEMBER 07, 2023

ORDER :-

1. Respondent no.1 was served but did not appear. Hence, proceeded exparte.

2. Learned counsel for respondent no.2 states that respondent no.2 is not responding him and never supplied him the instructions. He also called the son of respondent no.2. He was

intimated about the listing of the matter. He also sent a letter to respondent no.2 but it has been returned as he was not available. The said letter is placed on record and marked as Exhibit 'A'. It seems that respondent no.2 has complete information and knowledge of the matter listed today but he appears to have no interest. Hence, he is proceeded ex parte. The counsel holding for him may argue, if he desires, in his absence.

3. Heard learned counsel for the appellants.

4. This Court by order dated 11.07.2017 issued notice to the respondents for final disposal.

5. Learned counsel for the appellants would submit that the property in dispute was not correctly identified. There was no evidence that the plaintiff got the share in joint family property and the property in dispute came to his share. The encroachment was not exactly proved. Unless the encroachment area is identified, no decree could have been passed. That identification of the property is a substantial question of law to be determined in the case along with the rights acquired by the plaintiff.

6. There are two concurrent judgments holding that defendant no.3/present appellant has encroached upon 30 x 30 feet area of the plaintiff. Both Courts have appreciated the facts and held that the plaintiff was the owner of the suit land. The plaintiff has a specific case that when he came from jail after suffering the sentence,

he revealed that defendant no.3 has encroached upon his land which he had acquired by partition.

7. Though the learned counsel for the appellants argues that there was no evidence of partition, but the appellants did not deny that the plaintiff has a share, right or interest in the suit land. Therefore, there appears no substance in the arguments of the learned counsel for the appellants. As far as the identification of the area encroached upon is concerned, both parties have led the evidence. Both Courts appreciating the evidence came to the conclusion that defendant no.3/present appellant encroached upon the land measuring 30 x 30 feet.

8. Perusal of the judgments impugned before the Court and the defence of the defendants, this Court is not satisfied that substantial questions of law have been involved in this case. He raised a question of facts only. Hence, the appeal stands dismissed. No order as to costs.

9. Civil Application No.10844 of 2023 stands disposed of.

(S.G. MEHARE, J.)