

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) NO. 22924 OF 2019
WITH
CIVIL APPLICATION NO. 98 OF 2022
(FOR CONDONATION OF DELAY)
WITH
CIVIL APPLICATION (ST.) NO. 22926 OF 2019
(FOR STAY)**

Sharada Krishnadev Doke
and anr.

...Appellants

V/s.

Babasaheb Atmaram Pawar
and Ors.

...Respondents

Mr. Somnath Thengal i/by. Mr. Prasad Kulkarni, for the Appellants.

None for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 21 September 2023.

P.C. :

1. By this Appeal, the Appellants challenge the judgment and order dated 16 July 2018 passed by the District Judge-1, Solapur in Regular Civil Appeal No.88/2017 by which the District Judge, while setting the judgment and decree dated 27 February 2017 of the Trial Court has remanded the suit for retrial after measurement of the entire land bearing Gat No.44 through a Court Commissioner.

2. I have heard the learned counsel appearing for the Appellants. After considering the submissions canvassed by the learned counsel for the Appellants, it is seen that the Appellants had instituted Regular Civil Suit No.60/2008 for recovery of possession and perpetual injunction. The suit was dismissed by the Trial Court by judgment and order dated 27 February 2017. The Appellants preferred Regular Civil Appeal No.88/2017 before the District Court which has partly allowed the Appeal and has remanded the suit for retrial. Inviting my attention to the findings recorded by the Appellate Court in paras-26 and 27 of the order of the Appellate Court, the learned counsel for the Appellants would express an apprehension that the Appellate Court has directed measurement of only part of the land which can again not demonstrate any encroachment on the part of the Defendants. The said apprehension appears to be thoroughly misconceived as the Appellate Court has directed the measurement of the entire land bearing Gat No.44 by appointment of a Court Commissioner. I therefore do not find any merit in the present Appeal. The Appeal is accordingly **rejected** without no order as to costs.

3. With dismissal of the Appeal, the Interim Applications taken out for condonation of delay and stay do not survive. The same are disposed of as infructuous.

SANDEEP V. MARNE, J.