

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.457 OF 2023

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Govindrao Mamtaji Nikam & Anr. ... Appellants

V/s.

Bhima Kashinath Nikam (Deceased)

Through Legal Heirs & Ors. ... Respondents

**WITH
CIVIL APPLICATION NO.406 OF 2018
IN
SECOND APPEAL NO.457 OF 2023**

Govindrao Mamtaji Nikam & Anr. ... Applicants

V/s.

Bhima Kashinath Nikam (Deceased)

Through Legal Heirs & Ors. ... Respondents

Mr. Kuldeep S. Patil for the appellant/applicant.

Mr. Rameshwar N. Gite for respondent Nos.1a to 1d, 2 and 3.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 14, 2023

P.C.:

1. The appellants are original defendant Nos.3 and 4.
2. The respondents filed Regular Civil Suit No.145 of 2010 seeking relief of removal of encroachment and possession of encroached portion.

3. According to the plaintiff's case, plaintiff's brother executed sale deed in favour of defendant No.3 for area admeasuring 60R. The sale deed was dated 27 March 1980. However, according to the plaintiff, the defendant Nos.3 and 4 committed encroachment over the suit property and, therefore, they filed suit for removal of encroachment.
4. Defendant Nos.1 and 2 contested the suit by filing written statement. According to them, measurement carried on 5th July 2010 is correct and there is no encroachment.
5. Defendant Nos.3 and 4 contested the suit by filing written statement. According to them, they purchased land to the extent of 60R in the year 1968. The 20R land from Survey No.5/5 and 1R land from Survey No.5/6 was acquired by the Government for road widening along with other lands. Therefore, 41R land remain in possession of the plaintiff.
6. The Trial Court appointed TILR during pendency of the suit. The TILR submitted report below Exhibit-49. The TILR indicated encroachment to the extent of 20R. The report of TILR indicates that defendant Nos.3 and 4 were found in possession of 79R. It is undisputed that defendant No.3 and 4 purchased only 60R land, therefore, the finding of fact recorded by the Courts below that defendant Nos.3 and 4 have encroached over the suit property to the extent of 20R is based on admissible evidence. The finding of encroachment being question of fact, in absence of perversity the findings of fact need not be interfered with. No substantial question of law is involved.

7. The second appeal is dismissed. No costs.

(AMIT BORKAR, J.)