



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 178 OF 2019
WITH
CIVIL APPLICATION NO. 4038 OF 2019
IN SA/178/2019**

Lahanbai Bhagwanta Sinare
Deceased Through Lrs Ramnath
And Others
Appellants
(orig. defendants)

VERSUS

Punja Bala Sinare
Respondent
(orig plaintiff)

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Advocate for Appellants : Mr. Kanawade Ajay T.
Advocate for Respondent: Mr. Satajeet S. Dixit

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : 3rd December, 2024

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FINAL ORDER :-

1. The appellants/original defendants assails concurrent judgment and decree passed in Regular Civil Suit No.368 of 2002 by Jt. Civil Judge J.D. Sangamner dated 21.4.2008 and decree in Regular Civil Appeal No.53 of 2008 passed by the District Judge-2, Sangamner dated 13.11.2018, by which suit of respondent/plaintiff for removal of encroachment and

possession has been decreed. (Parties to the appeal hereinafter are referred to as per their 'original status' in the suit).

2. The Respondent/plaintiff instituted the suit contending that he is owner of the land bearing S.No.63/7A admeasuring 1H 8R situated at village Chikhali, Tq. Snagamner as specified in the plaint. According to plaintiff, it is his ancestral property. Defendants are unconcern with the suit property. However, defendants are cultivating land in S.No.63/7B admeasuring 34R which has been recorded in the name of defendant no.1. Defendants encroached upto 20R land of the plaintiff which is known by local name "Malai".

3. Defendants refuted claim of the plaintiff contending that, in fact, defendants are owners of land survey no.63/7B which admeasures 40R, however, plaintiff in connivance with revenue officers got effected false entries in record of rights to decrease area of defendants to 34R and increase area in his name. Defendants had also filed a counter-claim which was

subsequently withdrawn. Trial Court framed issues considering controversy surfaced from the pleadings. Plaintiff relied upon evidence of Court Commissioner Shashikant Ramchandra Jadhav (T.I.L.R.), Sangamner and examined him as PW-1 exhibit 46 and also recorded his own evidence as PW-2. Plaintiff tendered relevant documentary evidence in support of his claim. Defendant relied upon his own evidence and evidence of witness Murlidhar. After hearing parties Trial Court concluded that plaintiff proved his ownership over suit property bearing survey no.63/7A admeasuring 1H 08R and also encroachment by defendants to the extent of 20R on land of the plaintiff i.e. suit land. Consequently, decreed suit of plaintiff. Defendants filed R.C.A.No.53 of 2008 before the District Judge, at Sangamner, who confirmed the judgment and decree passed by the trial Court.

4. In endeavor to assail concurrent judgment and decree, Mr. Ajay Kanwade, learned advocate appearing for appellants submits that, since it was a case of dispute pertaining to encroachment, it was

incumbent upon surveyor to examine entire block. However, report of Court commissioner indicates that he has measured only land of the plaintiff. Based on such evidence and map, both the Courts have erroneously concluded that plaintiff proved encroachment of defendants over the suit land. According to him, finding recorded by the Courts below is perverse.

5. Per contra, Mr. Dixit, learned advocate appearing for sole respondent/plaintiff would submit that surveyor has measured land of plaintiff as well as defendant. Measurement map clearly shows that defendant possessed excess land beyond their ownership and area in possession of ownership of plaintiff has been reduced to that extent. Consequently, both the Courts have rightly drawn conclusion that defendant has encroached upon plaintiff's land and granted decree of possession.

6. It is true that Court Commissioner has not issued notices to all sub-Divisions of S.No.63, however, measurement map would depict that he measured land in S.No.63/7A owned by plaintiff and S.No.63/7B owned

by defendants. Report of the Court Commissioner suggests that defendant found in possession of excess land to the extent of 20R. Defendants have not explained how they came in possession of the land beyond their ownership. Evidence of the Court Commissioner clearly depict that plaintiff is in possession of 88R land as against his ownership of 1H 8R; whereas defendants are in possession of 60R land although they claims ownership of 40R land, whereas as per revenue record they own only 34R land. Trial Court as well as Appellate Court appreciated aforesaid evidence in its proper perspective and recorded concurrent finding of fact that defendants have encroached upon suit land, which is owned by plaintiff.

7. Mr. Kanawade, learned advocate appearing for appellant endeavors to contend that measurement map is not clearly indicating encroached area, therefore, re-measurement would be necessary. However, in view of admitted fact that defendants are owner of 34R land and found in possession of the 60R land, re-measurement would not be necessary only for want of

earmarking area of encroachment in map drawn by Commissioner. Pertinently, no efforts was made by defendants either before the Trial Court or First Appellate Court to seek re-measurement of the land citing aforesaid reasons. Request made during course of argument at this stage need not be considered when logical conclusion has been drawn by both Courts below based on available evidence and decree has been passed. Since, there is concurrent finding of fact based on admissible evidence, no substantial question of law arises in this Second Appeal. Hence, second appeal stands **dismissed**. No costs. Pending civil application, if any, also stands **disposed off**.

(S. G. CHAPALGAONKAR)
JUDGE

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