



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 190 OF 2015
WITH CIVIL APPLICATION NO. 10233 OF 2013

- (1) Ramprasad s/o. Surajlal Jaiswal,
Age : 74 years, Occ. : Agriculture,
R/o. : Kupta, Tq. Selu, Dist. Parbhani
- (2) Manik s/o. Bhujangrao Solanke
Age : 53 years, Occ. : Agriculture,
R/o. : Kupta, Tq. Selu, Dist. Parbhani

... APPELLANTS
(Ori. Appellants/Defendants)

VERSUS

- (1) Sawitrabai w/o. Digamber Solunke,
Age : 63 years, Occ. : Agriculture,
R/o. : Kupta, Tq. Selu, Dist. Parbhani

Through its Power of Attorney holder

Mr. Diamber s/o. Tatyrao Solunke,
Age : 75 years, Occ. : Agriculture,
R/o. : Kupta, Tq. Selu, Dist. Parbhani

- (2) Surendra s/o. Dalpatrao Solunke,
Age : 34 years, Occ. : Agriculture,
R/o. : Kupta, Tq. Selu, Dist. Parbhani

... DEFENDANTS
(Respondent No.1 – Ori. Plaintiff,
Respondent No.2 -Ori. Defendant)

...
Mr. P.S. Agrawal – Advocate for Appellants

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CORAM : SANDIPKUMAR C. MORE, J.
DATE : 27th June, 2024

ORDER :

1. The present Second Appeal is directed against the

concurrent findings of both the learned Courts below.

2. The present respondent No.1 i.e. original plaintiff filed suit for possession of encroached portion by contending that, she is owner of land Gat No. 281 admeasuring 3H 48R situated at village Kupta, Tq. Selu, Dist. Parbhani. According to her, the present appellants who are defendant Nos.1 and 2 and present respondent No.2 i.e. original defendant No.3 made respective encroachments on her land to the extent of total area of 29R. The said suit i.e. Regular Civil Suit No. 73 of 2000 for recovery of said encroached portion of 29R land is tried by learned Civil Judge Junior Division at Selu (*hereinafter referred to as “**the learned Trial Court**”*) and on the basis of evidence on record the learned Trial Court decreed the same. Thereafter, present appellant No.1 challenged the judgment and decree dated 17.01.2007 in the aforesaid civil suit before the learned District Judge at Parbhani (*hereinafter referred to as “**the learned First Appellate Court**”*) vide Regular Civil Appeal No. 72 of 2009, but the learned First Appellate Court vide judgment and decree dated 01.01.2013 dismissed the same and confirmed the decree passed by the learned Trial Court. Hence, this appeal.

3. Heard learned Counsel for the appellants on admission. According to him, both the learned Courts below have drawn erroneous inferences in respect of the evidence on record. According to him, original plaintiff i.e. respondent No.1 - Sawitrabai did not enter into witness box and, therefore, he raises the substantial question of law involved in this appeal that, "whether the suit for removal of encroachment can be allowed on the basis of evidence of power of attorney holder when the original plaintiff failed to enter into witness box for giving evidence ?"

4. It is significant to note that, this Court as well as Hon'ble Apex Court in number of judgments have made it clear that, in case of dispute over the boundaries, the ultimate solution for its adjudication is the joint measurement of the land in dispute. As such, even if no evidence led by the rival parties in support of their contentions by examining themselves, but the dispute can be resolved by joint measurement coupled with the evidence of cadastral surveyor. In the instant case, the main controversy appears to be the alleged encroachment of 29R land at the hands of original defendants. Moreover, it is also important to note that to establish the said encroachment cadastral surveyor

- Shri. G.N. Kulkarni was also appointed, who is examined at Exhibit - 98. In his evidence it has been clearly brought on record that, he measured the disputed land in presence of all the parties and prepared a map by fixing boundaries in presence of the parties. There is nothing adverse, brought on record in the cross - examination of this surveyor. On the contrary, he has clearly denied the suggestion that, the defendants did not encroach upon the land of plaintiff. It is also important to note that, defendant Nos.1 and 3 despite resisting the suit by filing written statement did not enter into the witness box to adduce evidence in rebuttal as regards the encroachment.

5. The learned First Appellate Court has also upheld the findings of the learned Trial Court by discussing the evidence on record in proper perspective. Therefore, even though the respondent No.1 - plaintiff did not enter into witness box but considering the technical aspect in respect of the dispute between the parties, there was no need for the plaintiff to depose as per her claim. On the contrary, the evidence of technical person such as cadastral surveyor is sufficient to resolve the dispute between the parties. Therefore, no substantial question of law as raised by the learned Counsel for

the appellants, appears to be involved in this matter and, therefore, the present Second Appeal stands dismissed at admission stage alongwith pending Civil Application No. 10233 of 2013.

6. The Second Appeal is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE