



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

**934 APEAL FROM ORDER NO. 45 OF 2023
WITH
CIVIL APPLICATION NO. 9011 OF 2023
IN AO/45/2023**

KUNDLIK MAHADU GAIKWAD
VERSUS
KAMALBAI DATTATRAYA DESAI AND ANOTHER

...
Mr. Gujarathi P. U., Advocate for the Petitioner

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 11/07/2024.

P. C. :

1. Heard learned counsel for the appellant at admission stage.
2. The respondents despite service, remained absent.
3. Only short point in respect of measurement of disputed plot is involved in this matter. The learned counsel for the appellant submits that the Cadastral Surveyor, who had measured the disputed plot, has deposed before the learned trial court that to ascertain the alleged encroachment over the suit plot i.e. plot No.7, plot Nos.1 to 6 are required to be measured from the concerned layout. Admittedly, the learned first appellate court by setting aside the judgment and decree passed in RCS No.69 of 2013, has directed the learned trial court to issue direction to concerned

Deputy SLR to measure the suit plot and plot No.6 only. However, in the light of opinion expressed by the Cadastral Surveyor i.e. PW-2 in the trial court the aforesaid clause No.3 can be modified for giving direction to the concerned Cadastral Surveyor to measure all the plots namely the plot Nos.1 to 6 and the suit plot No.7 to ascertain the alleged encroachment. In view of the same, the appeal stands partially allowed only to the extent of modification of clause No.3 of the operative order. It be read now as follows :

“3. The court of first instance i.e. the learned trial court Civil Judge (Senior Division), Basmatnagar, shall issue directions to the concerned Deputy SLR to measure plot Nos.1 to 6 and suit plot No.7 jointly at the cost of rival parties.”

The rest of the order shall remain as it is.

4. With these directions, the AO No.45 of 2023 stands disposed of at admission stage alongwith the pending civil application No.9011 of 2023 accordingly.

(SANDIPKUMAR C. MORE, J.)