



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 6 OF 2024

1. Prakash Pandurang Tayade,
Age : 65 years, Occ. : Agriculture,
2. Madhukar Pandurang Tayade,
Age ; 50 years, Occ. : Agriculture,
3. Sudhakar Pandurang Tayade,
(since deceased Through his LRs')
- 3.1. Kalpana Sudhakar Tayde,
Age : 46 years, Occ. : Household,
- 3.2. Deepali Sudhakar Tayde,
Age : 22 years, Occ. : Education
- 3.3. Pranali Sudhakar Tayde,
Age : 19 years, Occ. : Education,
- 3.4. Swami Sudhakar Tayde,
Age : 15 years (minor)
Through guardian mother –
Kalpana Sudhakar Tayde,

All R/o. : Takali Khurd, Tq. Jamner,
Dist. Jalgaon

... APPELLANTS

(Ori. Defendants)

VERSUS

1. Murlidhar Nivrutti Tayade (Mali),
Age : 67 years, Occ. : Agriculture,
R/o. : Mohadi, Tq. Jamner, Dist. Jalgaon
2. Bandu Nivrutti Tayade (Mali),
Age : 52 years, Occ. : Agriculture,
R/o. : Takali Khurd, Tq. Jamner, Dist. Jalgaon

3. Ravindra Nivrutti Tayade (Mali),
Age : 45 years, Occ. : Agriculture,
R/o. : Takali Khurd, Tq. Jamner,
Dist. Jalgaon

... RESPONDENTS

(Ori. Plaintiffs)

...

Mr. Nilkant D. Batule – Advocate for Appellants

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 8th March, 2024

ORDER :

1. The present appellants who are the original defendants in Regular Civil Suit No.47 of 2015 have challenged the judgment and order dated 18.09.2023 passed by the learned District Judge, Jalgaon i.e. learned First Appellate Court in Regular Civil Appeal No.161 of 2018. Under the impugned order, the learned First Appellate Court has set aside the dismissal of Regular civil Suit No.47 of 2015 filed by the present respondents/plaintiffs and remanded the matter back to the learned Trial Court i.e. Civil Judge Junior Division, Jamner, Tq. Jamner, Dist. Jalgaon with direction to appoint D.I.L.R. as a Court Commissioner to carry out joint measurement of Gut No.88/1 and 88/2 situated at village Takali Khurd, Tq. Jamner, Dist. Jalgaon at the cost of respondents/plaintiffs.

2. It appears that, the present respondents/plaintiffs had applied to T.I.L.R. to measure land gut No.88 since it was alleged by them that, the present appellants had made encroachment on their land. Accordingly, the T.I.L.R. measured the suit land and on the basis of his report plaintiffs/respondents filed Regular Civil Suit No.47 of 2015 before the learned Trial Court for removal of encroachment and getting possession. The learned Trial Court dismissed the said suit on 20.08.2018 by rejecting the report of T.I.L.R. However, in the appeal the learned First Appellate Court though rejected the report of T.I.L.R., but remanded the matter back to the learned Trial Court for joint measurement as mentioned above.

3. Learned Counsel for the appellants/defendants vehemently argued that, both the Courts below have already rejected the report of T.I.L.R. on the basis of which the original suit was filed. He pointed out that, the learned First Appellate Court definitely erred in remanding the matter when the report of T.I.L.R. was sufficient to come at conclusion whether the respondents/plaintiffs succeeded in proving encroachment at the hands of the present appellants/defendants. He further pointed out that, the evidence

on record is sufficient and, therefore, the learned First Appellate Court despite remanding the matter back to the learned Trial Court, should have dismissed the appeal.

4. On perusal of the impugned order as well as judgment of the learned Trial Court in the original civil suit it is evident that, the Cadastral Surveyor (P.W. 3), Mr. Patil had carried out the measurement of the disputed lands without giving prior notice to the present appellants/defendants. Moreover, it has been established that the said measurement was not carried out as per Survey Manual and the surveyor also could not point out the area of the disputed lands merged in the roads. Thus, the measurement carried out by the surveyor was against the Survey Manual and it appears faulty.

5. It is significant to note that, there are numbers of judgments passed by this Court as well as the Hon'ble Apex Court that, whenever there is dispute regarding boundaries the proper solution is joint measurement. It appears that, earlier measurement carried out by the surveyor in absence of the present appellants and, therefore, the direction issued by the learned First Appellate Court in the light of judgments of this Court as well as

the Hon'ble Apex Court for carrying out the joint measurement appears proper in the present circumstances. As such, no substance in the present appeal and it stands dismissed at admission stage.

6. The Appeal from Order is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE