

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.16459 OF 2023
IN
SECOND APPEAL NO.294 OF 2023

...

Namdeo Sukhadeo Chavan & Ors.Appellants/Applicants

V/S

Pandurang Maruti Dange & Ors.Respondents

...

Mr. Vishwanath S. Talkute for the Appellants/Applicants.

Mr. Sachinkumar Rajepandhare for the Respondents.

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CORAM: SANDEEP V. MARNE, J.

DATE : JANUARY 24, 2024.

P.C.:

1 I have heard Mr. Talkute, the learned Counsel appearing for the Appellants/Applicants and Mr. Rajepandhare, the learned Counsel appearing for the Respondents.

2 After having heard the learned Counsel appearing for the parties and after having gone through the judgments of the Trial Court and First Appellate Court so also various documents placed on record, in particular measurement extract produced before the Trial Court as well as the evidence of Mr. Vishnu Hanmant Dhage, Surveyor working in the office of the TILR, Pandharpur, I am of the view that the Court Commissioner has not measured the entire area of Gat No.66A. What

TILR ought to have done was to first measure the entire area of land bearing Gat No.66A. Thereafter he ought to have measured the area in actual possession of the Plaintiffs and Defendants. The figures of total area of Gat No.66A as well as the land in actual possession of the Plaintiffs and Defendants would give some idea as to whether the Defendants have indeed encroached upon any land belonging to Plaintiffs.

3 Both the learned Counsel appearing for the parties fairly agree that upon admission of the Appeal it would be appropriate that the TILR is directed to conduct fresh measurement and present before the Court the figures of total area of land bearing Gat No.66A, as well as the lands in possession of Plaintiffs and Defendants. I am mindful of the fact that the suit was instituted by the Plaintiffs in the year 1988 and by now 36 long years have elapsed since the litigation ensued between the parties. In that view of the matter and for the purpose of ascertaining the real picture at the site, it would be appropriate if TILR is directed to conduct fresh measurement and present the picture before the Court.

4 Though the Interim Application is for taking on record the document produced alongwith it as additional evidence, in my view instead of drawing surmises on the basis of the architect's certificate, it would be appropriate if TILR conducts the measurement of the land afresh.

5 The Interim Application is accordingly disposed of by directing that the TILR, Pandharpur shall depute the Surveyor in his office to conduct measurement of land bearing Gat No.66A, at village Adhiv, Taluka Pandharpur, District Solapur who shall file a report alongwith the map indicating (i) total area of Gat No.66A, (ii) area of Gat No.66A/2 in possession of Plaintiffs and (iii) area of land bearing Gat No.66A/1 in possession of Defendants. TILR, Pandharpur to conduct the measurement and prepare a report and map within a period of four weeks from today. Costs to be paid by the Appellant/Applicant.

(SANDEEP V. MARNE, J.)