



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 626 OF 2017
WITH
CIVIL APPLICATION NO.736 OF 2017

Narayan Laxman Bhagwat

... Appellant.

Versus

Sangram Dilipsinh Jadhavrao

... Respondent.

Mr. Shriram S. Kulkarni, for the Appellant.

Mr. R.V. Govilkar, Senior Advocate a/w. Ms. Shana Khan for Respondent Nos.1 to 9.

Mr. Rohan Surve, for the proposed-Respondent No.14(a)

Coram : Sharmila U. Deshmukh, J.

Date : April 23, 2024.

P. C. :

1. At the outset, learned counsel for the Appellant seeks leave to amend to incorporate the additional substantial question of law. Leave granted. Amendment to be carried out forthwith.

2. After arguing for considerable length of time, considering that the suit was for recovery of possession of alleged encroachment, learned counsel for the parties, on instructions of their respective parties, submits that the matter be remanded to the Trial Court for the purpose of appointment of Court Commissioner, who shall

properly measure Gat Nos.62 and 63 and fix boundaries and prepare the map showing the extent of encroachment, if any.

3. In light of the consensus arrived at between the parties, the judgment of the 1st Appellate Court dated 23rd February, 2017 is hereby quashed and set aside. Regular Civil Suit No.199 of 1998 is restored to file of Joint Civil Judge, Junior Division, Daund, Tal. Daund, District Pune.

4. Learned counsel for the parties submits that the parties will appear before the Trial Court on 3rd May, 2024 at 11:00 a.m. A joint application to be made to the Trial Court for appointment of TILR, Daund as Court Commissioner. The Trial Court to pass an appropriate order on the said application within a period of one week thereafter appointing TILR, Daund as Court Commissioner. The Court Commissioner to implement the commission within a period of six weeks thereafter and submit a report to the Trial Court. The Court Commissioner shall prepare measurement map showing the boundaries of Gat Nos.62 and 63 and with conclusion as to whether there is any encroachment or not. The TILR to give notice of measurements to all parties concerned as well as the adjacent landowners. After the report alongwith map is received from the Court Commissioner, the Trial Court to decide the suit afresh by giving

opportunity to both parties to lead evidence if so advised.

5. Second appeal stands disposed of in the above terms. In view of the disposal of the Appeal, Civil/Interim Applications, if any, taken out in this Appeal, does not survive and same is disposed of.

6. It is made clear that the matter is remanded for appointment of Court Commissioner as the dispute is about encroachment and the evidence on that aspect to be considered by the Trial Court while adjudicating the dispute afresh.

[Sharmila U. Deshmukh, J.]