

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.294 OF 2023
WITH
INTEIRM APPLICAITON NO.4015 OF 2023
WITH
INTEIRM APPLICATION NO.15895 OF 2023
IN
SECOND APPEAL NO.294 OF 2023**

Namdeo Sukhadeo Chavan and Ors. ...Appellants

Versus

Pandurang Maruti Dange and Ors. ...Respondents

....

Mr. Vishwanath S. Talkute *for the Appellants.*

Mr. Sachinkumar Rajepandhare *for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

DATED : 22 APRIL 2024.

P.C.:-

1. By this appeal the Appellllants challenge Decree dated 30 June 2022 passed by the District Judge -1, Pandharpur in Regular Civil Appeal No.56 of 2010 dismissing the appeal and confirming the Decree dated 9 April 2010 passed by the Joint Civil Judge Junior Division, Pandharpur in Regular Civil Suit No.534 of 1988.

2. This Court admitted the appeal by order dated 24 January 2024 by formulating following substantial question of law:-

“(i) Whether in absence of measurement of entire Gat number as well as lands in actual possession of Plaintiffs and

Defendants, inference of encroachment by Defendants in Plaintiffs' land can be drawn?"

3. After admission of the appeal on the above question of law, this Court felt that TILR can be directed to conduct fresh measurement of the lands in question with a view to enable this Court to decide the present appeal. This Court accordingly passed following order on 24 January 2024 in Interim Application No.16459 of 2023, which reads as under:-

- "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."

4. In pursuance of order passed by this Court on 24 January 2024, the Deputy Superintendent of Land Records, Pandharpur (which is a replacement in the post of TILR, Pandharpur) had submitted report dated 19 April 2024 alongwith

a map showing the total area of land bearing Gat No. 66/A as well as Gat No.66/A/1 & 66/A/2. As per the report of the Deputy Superintendent of Land Records, land admeasuring 6 R is found to be encroached upon by the Appellant, which is indicated in yellow ink in the map. This Court has already taken on record map as well as report of Deputy Superintendent of Land Records.

5. Mr. Talkute, the learned Advocate for the Appellants and Mr. Rajepandhare, learned Advocate for the Respondents, after seeking instructions from their respective clients are agreeable to the position that Appellants can handover possession of land admeasuring 6 R indicated in yellow ink in the map prepared by the Deputy Superintendent of Land Records, to the Respondents. Both of them make a joint request that the decree passed by the Trial Court and confirmed by the first Appellate Court be modified to the extent that the Appellants are directed to handover the land admeasuring 6 R indicated in yellow ink of the map prepared by the Deputy Superintendent of Land Records, Pandharpur, to the Respondents.

6. It appears that the Deputy Superintendent of Land Records has incorrectly described the status of the parties. The Appellants herein, who was the original Defendant has been erroneously described as Plaintiff and *vice versa*. It is therefore clarified that irrespective of the description of the parties by Deputy Superintendent of Land Records in the map and report, the possession of land admeasuring 6 R indicated in yellow ink in

the map shall be handed over by the Appellants in the present appeal to the Respondents.

7. In view of the agreement prevailing between the parties I proceed to pass following order:-

- (i) The Appellants shall handover to the Respondents land admeasuring 6 R as indicated in yellow ink of the map prepared by Deputy Superintendent of Land Records, Pandharpur, during the course of measurement on 19 March 2024, within a period of three months.
- (ii) The Decree passed by the Trial Court and the first Appellate Court shall stand modified to the above extent.
- (iii) In order to avoid any further confusion about location of portion of land admeasuring 6R to be handed over by Appellants to Respondents, the action of handing over of possession shall be carried out in presence of Deputy Superintendent of Land Records.

8. With the above directions, the Second Appeal stands disposed of.

9. In view of the disposal of the Second Appeal, the interim applications do not survive and hence stand disposed of.

SANDEEP V. MARNE, J.