

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 394 OF 2024
WITH
INTERIM APPLICATION NO. 9660 OF 2024
IN
SECOND APPEAL NO. 394 OF 2024**

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Karbhari Shaknar More	Appellant/Applicant
Vs.	
Shivaji Parbat Sathe	Respondent

Mr. Sandeep Barve a/w Karishma Raoot i/b B. K. Barve & Co. for the Appellant/Applicant.

**CORAM : GAURI GODSE, J.
DATE : 25th JUNE 2024**

ORDER :

1. This second appeal challenges the concurrent judgments and decrees for the removal of encroachment passed against the appellant.
2. Learned counsel for the appellant submits that the encroached area, as per the description in the plaint, forms part of Survey No.40/4, in which the appellant had a share. He submits that the entire Survey No.40/4 was incorrectly consolidated at the time of the consolidation

scheme and added to Gat No.130 in the name of the plaintiffs. He submits that since it was an error at the time of implementation of the gat scheme by adding the appellant's share to Gat No.130, both the Courts ought to have taken into consideration that the appellant had right in the alleged encroached area, and it never formed part of the property sold to the plaintiff's ancestors. He further submits that the Taluka Inspector of Land Record's (TILR) report relied on by both the Courts cannot be accepted as the TILR did the demarcations without considering the boundaries. To support his submissions to challenge the TILR's report, he relies upon the decision in the case of ***Manohar Mahadeorao Pagrut Vs. Sau. Sunanda Ramdas Tharkar***¹ and ***Smt. Niranjanabai w/o Chandrakant Vira Vs. Smt. Pramilabai wd/o Balkrishna Zade & Anr***². He submits that the boundaries regarding the alleged encroachment were not taken into consideration by the TILR.

3. Hence, according to the learned counsel for the appellant, in view of the legal principles settled in the said decision regarding the

1 [2008 (2) Mah L R 899]

2 2004(3) ALL MR 619

boundary marks not found in the report, the second appeal would require consideration.

4. I have considered the submissions made by the learned counsel for the appellant. Perused the papers. Both the Courts have recorded concurrent findings of facts with regard to the encroachment carried out by the appellant. The appellant does not dispute the plaintiff's ownership of Gat No.130, which forms part of the original Survey Nos.40/1 to 40/5. Admittedly, the appellant has not challenged the consolidation scheme. The appellant's claim is based on the contention that the appellant had a share in Survey No. 40/4, and hence, the entire Survey No.40/4 could have been made part of the Gat No.130. Since there is no challenge to the gat scheme, the contentions raised with regard to the appellant's right in Survey No.40/4 cannot be examined in a civil suit. The jurisdiction with regard to any errors in the implementation and formation of the Gat scheme is with the authority under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

6. The second submission with regard to the objection to the TILR's

report would require a re-appreciation of the facts and evidence, which is not permissible under Section 100 of the Code of Civil Procedure (CPC). A perusal of the reasons recorded by both Courts reveals that the TILR report, objections raised by the appellant and the oral evidence have been taken into consideration by both Courts while recording findings of facts regarding the encroachment carried out by the appellant. The measurement plan by TILR has been examined in detail by both the Courts. Hence, I do not see any substance in the arguments raised on behalf of the appellant regarding the marking of the boundaries.

7. Even otherwise, once the appellant accepts that the consolidation scheme is not under challenge and the encroached area forms part of Gat No.130, which stands in the name of plaintiffs, it is obvious that the appellant has no right, title or interest in Gat No.130. The appellant admits that Gat No.130 is in the name of the plaintiff, and he does not claim any independent right in the encroached area or that it is not the case of the appellant that the encroached area is not part of Gat No.130.

8. The grounds of objections raised on behalf of the appellant on the TILR report are not required to be considered in the second appeal as it does not involve any substantial question of law. Hence, in view of the facts of the present case, the legal principles settled by this Court in the case of ***Manohar Pagrut*** and ***Niranjanabai*** are of no assistance to the arguments raised on behalf of the appellant.

9. The second appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed.

10. In view of the dismissal of the second appeal, Interim Application No. 9660 of 2024 is dismissed as infructuous.

[GAURI GODSE, J.]