



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Second Appeal No. 446 Of 2021
With
Civil Application No. 2537 Of 2020

Bhagwan s/o Punjaram Wathore,
Age : 58 years, Occupation-Agri,
R/o- Hardaf. Tq. Hadgaon,
District Nanded.

.. Appellant

Versus

Yogesh s/o Kishanrao Suryawanshi,
Age : 30 years, Occupation-Agri,
R/o- Hardaf. Tq. Hadgaon,
District Nanded.

.. Respondent

* Advocate for the Appellant :
Mr. Pavankumar S. Agrawal

* Advocate for the Respondent :
Mr. Amol R. Joshi holding for
Mr. D.R. Deshmukh

CORAM : SHAILESH P. BRAHME, J.
DATE : 9th JULY 2025

FINAL ORDER :

1. Heard both sides.

2. Appellant who is original Defendant, is challenging concurrent finding of facts recorded against him by passing decree of possession of 6R of land survey no.201/1 and directing inquiry for the mesne profit.

3. Parties are adjoining lands owners. Appellant is owner of survey no.201/2, whereas Respondent is owner of survey no.201/1. It is contended by the Respondent that Appellant encroached upon his land by destroying northern side boundary. A measurement was conducted by Taluka Inspector of Land Record and he was found to be in possession of encroached portion. The claim of the Respondent is denied by the Appellant.

4. Initially suit was decreed and the Appellant had preferred appeal. Appellate Court had remitted the matter to the trial Court to appoint Taluka Inspector of Land Record as a Commissioner to enable fresh measurement. After remand, PW-3 - Vilas, a Surveyor was appointed and he conducted measurement. Considering measurement map Exhibit-64 and the evidence on record, trial Court found that Appellant committed encroachment of 6R of land. The findings are confirmed by Lower Appellate Court.

5. Learned Counsel Mr. Agrawal submits that no proper measurement was conducted and the map was prepared superimposing vahivat map. It is submitted that there is no convincing material on record to show that there is encroachment by 6R of land by the Appellant. He would advert my attention to the admissions of PW-1 - Yogesh in paragraph no.11 and chief-examination of PW-2. My attention is also adverted to the deposition of PW-3. It is submitted that ground no.D and E would

involve substantial questions of law.

6. Per contra, it is submitted by Counsel for the Respondent that Appellant did not step into witness box and no evidence was led. It is submitted that both the Courts below have rightly appreciated, cross-examination of PW-1, deposition of PW-2 and cross-examination of PW-3 - Vilas to come to conclusion that lands of both the parties were measured physically and the encroachment was noticed. It is submitted that considering concurrent finding of facts, no interference is called for.

7. I have considered rival submissions of the parties. There is no dispute that they are adjoining land owners. The appreciation of evidence is not permissible per se while exercising jurisdiction in Second Appeal. However for examining merits of the substantial questions of law pressed into service, I have gone through the oral evidence of the witnesses.

8. After remand, PW-3 was appointed as Court Commissioner and he conducted measurement and drew map by visiting the site. It was recorded by both the Courts below that after issuing notices, the measurements were conducted on 05.04.2007. A panchnama was also prepared and thereafter map was prepared. The deposition of PW-3 clearly shows that old record of survey no.201/1 and 201/2 were available in the office.

No suggestion was given in the cross-examination to the witness that entire record was prepared without conducting local inspection. The deposition of PW-2 also shows that previously also a spot inspection was conducted by the said witness, boundary marks were embedded, panchanama was conducted and measurement was done. In cross-examination of PW-1 - Yogesh, it is clarified that as to how the Appellant gradually made encroachment by aligning the boundaries in between the lands.

9. Considering the findings recorded by both the Courts below, I do not find that there is any perversity or illegality. The substantial question of law pressed into service is devoid of any merits. No case is made out to entertain Second Appeal.

10. Second Appeal is dismissed. There shall be no order to costs.

11. Civil Application is disposed of.

SHAILESH P. BRAHME
JUDGE

Nejesh