IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 326 OF 2022

Sindhubai Rajaram Patil
VERSUS
Madhukar Daga Patil
...
Mr. S. A. Kulkarni, Advocate for Appellant
Mr. Girish Rane, Advocate for Respondent
...

CORAM : ROHIT W. JOSHI, J.

Dated : 28TH FEBRUARY, 2025

PER COURT :-

. Heard.

2. Admit on the following substantial question of law:-

a. Having regard to the boundary dispute, whether it was necessary to carry out joint measurement of the lands of the plaintiff and the defendant in order to ascertain the extent of encroachment?

3. Heard finally with consent of parties.

4. The learned Advocate for the appellant contends that it is a settled legal position that in disputes pertaining to encroachment, joint measurement of the lands is absolutely essential and the matter cannot be decided without joint measurement.

5. The learned Counsel for the respondent strongly opposes the submission. He draws my attention to the judgment of the learned First Appellate Court to point out that when similar request was made by the present respondent, the appellant had strongly opposed it.

6. Perusal of the record, however, indicates that at different stages of the proceeding, having regard to the outcome of the suit, parties are changing their stands. However, although at different stages, both parties have contended that joint measurement of the disputed properties is essential.

7. Legal position in this regard is also settled by several judgments of this Court that encroachment disputes cannot be adjudicated without joint measurement of disputed lands.

8. Having regard to the fact that the appellant had initially opposed the prayer for joint measurement, the fees for the joint measurement shall be deposited by the appellant. Even otherwise the appellant is the plaintiff and must bear expenses for the same.

9. In that view of the matter, the Second Appeal is partly **allowed** in the following terms:

ORDER

a. Judgment and decree dated 11.10.2017 passed by the learned Civil Judge Junior Division, Parola in RCS No.08 of 2008 and judgment and decree dated 16.02.2022 passed by the District Judge-2, Amalner in RCA No.35 of 2017 are quashed and set aside.

b. The matter is remanded back to the learned Civil Judge Junior Division, Parola, who is directed to appoint a cadastral surveyor from the office of Tahsil Inspector of Land Records for joint measurement of the disputed lands and to decide the Civil Suit afresh in the light of the measurement report and other evidence that the parties may choose to lead in the matter.

c. Liberty is granted to the parties to lead additional evidence if it is so desired.

d. Parties to bear their own cost.

(ROHIT W. JOSHI, J)

Rushikesh/2025