



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 SECOND APPEAL NO. 726 OF 2011
WITH
CIVIL APPLICATION NO. 15318 OF 2011
IN SA/726/2011

GAHININATH HONAJI DAMALE AND ORS
VERSUS
VIJAY BALBHIM GARJE

...
Advocate for Appellants : Mr. S. D. Kotkar h/f Mr. Badakh
Vishal S.
Advocate for Respondent No.1/Caveator : Mr. V. S. Bedre.
...

CORAM : SHAILESH P. BRAHME, J.
DATE : 03.10.2025

PER COURT :-

1. Heard both sides.
2. In pursuance of my earlier order dated 18.09.2025, learned counsel for the appellants tenders on record affidavit tendering apology for not conveying order passed by Apex Court for which the hearing of this second appeal was deferred. The explanation tendered in the affidavit appears to be plausible. I do not find any oblique motive in suppressing the information. No undue benefit appears to have been derived by the appellants. The show cause notices are purged.

3. Second appeal is arising of concurrent findings of facts granting decree in favour of the respondent/plaintiff in Regular Civil Suit No.154 of 1999 which is confirmed by Lower Appellate Court in Regular Civil Appeal No.7 of 2006 vide judgment dated 23.09.2011.

4. The controversy pertains to land Gut No.461 belonging to the respondent/plaintiff measuring 1H. 20R. The defendants appear to be occupants and owner of land Gut No.460. Plaintiff's mother is the owner of Gut No.459. These lands are adjoining lands. It is alleged that appellants/defendants encroached on plaintiff's land to the extent of 2R.

5. Appellants/defendants contested the suit on various grounds. It is predominantly contended that the parties are the purchasers from common owner one Mr. Mohan Channe. The defendants purchased 1H. 82 R. land in 1977. In a consolidation scheme, less area was shown to the credit of the defendants i.e. to the extent of 1 Hectar and 62 R. He was required to take out the proceedings before the consolidation authorities for correcting the record. His writ petition is still subjudiced which has set a challenge to order passed by Secretary on 22.04.2014.

6. Plaintiff's mother instituted collateral Regular Civil Suit No.4 of 1996 alleging encroachment of 14 R. against the defendants. It was dismissed by the Trial Court. In lower Appellate Court, the measurement was directed to be conducted. A map prepared in pursuance of those measurements which was at Exh.106 indicated encroachment by the defendants to the extent of 5 R. in her land. Accordingly appeal was allowed. Against that, Second Appeal No.212 of 2011 was preferred which was dismissed on 20.09.2011.

7. Being aggrieved, defendants had preferred Civil Appeal No.7168 of 2012 before Apex Court which was dismissed on 03.04.2024.

8. Learned counsel for the appellants submits that for correction of the record and against the decision rendered by the consolidation authorities, his writ petition is subjudiced and therefore, it cannot be concluded that he has committed any encroachment. It is submitted that in a collateral proceedings, in Second Appeal No.212 of 2011 a liberty was given by High Court in paragraph No.5, albeit the second appeal was dismissed. Such a liberty needs to be given in the

present case also. It is further submitted that there is no reliable evidence on record indicating encroachment by the defendants.

9. Learned counsel Mr. Bedre appearing for the respondent supports impugned judgment and decree. He submits that concurrently both the Courts below decided against appellants after appreciation of evidence on record. The reasons assigned are well founded. Even the Apex Court endorsed that the appellants have encroached upon the land.

10. I have considered rival submissions of the parties. I have examined both the impugned judgments. The sale deed of the defendants does not reflect exact area purchased by him. In a collateral proceedings filed by Dropadabai, Regular Civil Appeal No.7 of 2006 was filed. A measurement was conducted and a map at Exh.106 was produced on record. It indicated that appellants caused encroachment not only on the Dropadabai's land but also on the land of the respondent/plaintiff. The cross-examination of the defendants indicates that there was no *Bandh* in between Gut Nos.460 and 461. The map which is at Exh.117 in the present case is in consonance with map at Exh.106 in a collateral proceeding, corroborated encroachment of 2 R.

11. The findings of facts recorded by both Courts below cannot be faulted. I do not find that there is any substantial question of law involved in the present case.

12. In the collateral proceedings Regular Civil Appeal No.120 of 2007 was allowed. Against that, Second Appeal No.212 of 2011 was preferred. While dismissing the second appeal, the then appellants, present defendants was granted liberty in view of the pendency of the proceedings in respect of correction of record before the consolidation authorities. The Hon'ble Apex Court also in the order dated 03.04.2024 took cognizance of the liberty given to the present appellants/defendants. It has not been set aside or interfered with by Apex Court. I proposed to follow the same course.

13. Undisputedly, Writ Petition No.577 of 2017 is still pending in High Court which is against order dated 22.04.2014. It is necessary to protect the liberty of the appellants to act upon the outcome of the proceedings pending before this Court. It would be open for the appellants to take recourse to appropriate measures as per the outcome of the writ petition. Save and accept, I find no substance in the second appeal.

14. Second appeal is dismissed.
15. Pending civil application is disposed of accordingly.

(SHAILESH P. BRAHME, J.)

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vmk/-