

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.262 OF 2024

WITH

INTERIM APPLICATION NO.8177 OF 2024

Manoj Ramchandra Shinde
(since deceased through his legal heirs)

1A. Suvarna Manoj Shinde & Ors.

...Appellants

Versus

Ganesh S/o. Bharat Shinde & Ors.

...Respondents

Mr. Prasad P. Kulkarni a/w. Mr. Nakul Shukla and Mr. Amol Kanaki,
for the Appellants.

CORAM: MADHAV J. JAMDAR, J.

DATED : 9th JULY 2025

JUDGMENT:-

1. Heard Mr. Prasad Kulkarni, learned Counsel appearing for the Appellants.

2. In this Second Appeal, the challenge by the Appellants-Defendant Nos.1 and 2 is to the legality and validity of the Judgment and Decree dated 24th November 2016 passed by the learned 2nd Jt. Civil Judge, Junior Division, Mohol in Regular Civil Suit No.160 of 2011 as also Judgment and Decree dated 5th

January 2024 passed by the learned Principal District Judge, Solapur in Regular Civil Appeal No.80 of 2018.

3. Mr. Prasad Kulkarni, learned Counsel submits that the following substantial question of law arises in this Second Appeal:

“Whether the map for Gut No.323 can be prepared without measuring the said Gut number and whether the decree can be passed on the basis of such a map?”

4. The learned Trial Court decreed the said Regular Civil Suit No.160 of 2011 and the learned Appellate Court has confirmed the decree passed by the learned Trial Court. The said suit bearing Regular Civil Suit No.160 of 2011 has been filed by the Plaintiff i.e. present Respondent No.1 seeking possession of encroached portion and injunction. The present Appellants are the Defendant Nos.1 and 2. Admittedly, the Defendant Nos.1 and 2 remained absent and therefore, the suit has proceeded *ex-parte* against them. It is specifically recorded in paragraph No.5 of the impugned Judgment and Decree of the learned Trial Court that inspite of receipt of

summons, the Defendant Nos.1 and 2 have failed to appear in the suit.

5. It further significant to note that the learned Trial Court directed appointment of Court Commissioner i.e. Cadastral Surveyor to conduct the measurement and to file report. Perusal of the record shows that the Cadastral Surveyor has issued notices to all the parties to the suit as well as to the adjoining agriculturists. As noted herein above, inspite of service of summons, the Defendant Nos.1 and 2 i.e. the Appellants failed to remain present in the suit. The perusal of the record further shows that pursuant to the notices issued by the Court Commissioner i.e. Cadastral Surveyor, the Defendant Nos.1 and 2 i.e. the Appellants remained present at the time of measurement. Thus, they got the knowledge of the suit at least when the said survey was conducted, assuming that they were not having knowledge of the suit earlier, although record shows that the suit summons has been served on them. Inspite of this position, the Defendant Nos.1 and 2 failed to appear in the said suit.

6. The Cadastral Surveyor has prepared the measurement map (Exhibit-82) by following the procedure. He has been examined as witness in the said suit. The relevant portion of examination-in-chief of the Cadastral Surveyor reads as under:

"तारीख २४.०१.२०१४ रोजी मी मोजणीसाठी जागेवर गेलो. मोजणीवेळी जाताना मी माझेसोबत प्लेन टेबल, प्रकरण, मोजणीसाठी आवश्यक असणारे कागदपत्र घेतले होते. मी केलेली मोजणी प्लेन टेबल पध्दतीने केली. पहिल्यांना मी सुर्वे नंबर फिरून पाहणी केली, त्यानंतर वादी प्रतिवादी यांच्या वहिवाटीच्या खुणा चुना टाकून दाखवल्या व त्यानंतर पाईंट फिक्स केला. त्यानंतर मी मोजणी केली. दिनांक २४.०१.२०१४ रोजी चुना टाकून वहिवाटीच्या खुणा दाखवल्या. दिनांक २५.०१.२०१५ ती मोजणी केली. त्यानंतर कार्यालयात येवून रेकॉर्ड पाहून सर्वे नंबर बाउंडी फिक्स केले. मी मोजणीबाबतच्या नोटीसा वादी प्रतिवादी व लगतचे शेतकऱ्यांना दिल्या होत्या. सदर सर्व लोकांचे ७/१२ उतारे अहवालासोबत दाखल केले आहेत. सदर सर्व लोकांचे उतारे सर्व मिळून १८ असून त्यांना अनुक्रमे निशाणी क.५८ ते ७६ देण्यात आले.

सदर मोजणीवेळी मी गट नकाशा वापरला आहे.

सदर मोजणीअंती वादीचे गट क.३२३/२ब मध्ये गट क. ३२३/४ चे धारकांनी २० आर. क्षेत्राचे अतिक्रमण केल्याचे दिसून आले सदरचे २० आर. क्षेत्राचे अतिक्रमण नकाशात TSWU ने दाखवले आहे. तसेच वादीचे गट क. ३२३/२ब मध्ये लगत धारक ३२३/१ चे धारकांनी ३२ आर. क्षेत्रात अतिक्रमण केल्याचे दिसून आले सदरचे अतिक्रमण ABDZ ने नकाशात दाखवले आहे."

English translation of the same reads as under:

“On the date 24.01.2014, I went to the site for carrying out survey. While going for carrying out survey, I had carried with me, the plain table, documents pertaining to the matter and also the documents required for the survey. I carried out survey by plain table method. First of all, I walked around the land of the said survey number and carried out inspection thereof. Thereafter, the marks of management of the Plaintiff and Defendant were shown by applying lime and thereafter, point was fixed. Thereafter, I carried out survey. On the date 24.01.2014, the marks of management were shown by applying lime and on the date 25.01.2015, the said survey was carried out. Thereafter, I returned to the Office and verified the Record and fixed the Survey number and boundaries. I had issued notices in respect of survey to the Plaintiff and the Defendant and the farmers of the adjoining lands. The 7/12 extracts in respect of lands of all the said persons have been submitted along with the Report. The said extracts of all the said persons are in all 18 and the same are marked as Exhibit No.58 to 76 respectively.

I have used map of Gat number at the time of the said survey.

After completion of the said survey, it was found that the Holders of the Land bearing Gat No.323/4 have made encroachment of the area adm. 20 Are from out of the land bearing Gat No.323/2B of the Plaintiff. The encroachment of the area adm. 20 Are is shown by the letters viz. ‘TSWU’ in the Map. Similarly, it was found that the adjoining Holders of the Land bearing Gat No.323/1 have made encroachment of the area adm. 32 Are from out of the land bearing Gat No.323/2B of the Plaintiff and the said encroachment is shown by the letters viz. ‘ABDZ’ in the Map”.

7. Thus, it is clear that the Court Commissioner i.e. Cadastral Surveyor after applying mind and also taking into consideration the record has prepared the map at Exhibit-82 and has come to the conclusion that there is encroachment as shown in the map by words ABDZ. Both the Courts have recorded concurrent findings that the Defendant Nos.1 and 2 have encroached part of the suit property. The said finding has been recorded on the basis of the evidence on record.

8. There is no perversity or illegality in the impugned Judgments and Decrees. Therefore, there is no substance in the substantial question raised by the learned Counsel appearing for the Appellants.

9. Accordingly, the Second Appeal is dismissed, however, with no order as to costs.

10. In view of the dismissal of the Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]

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