

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.743 OF 2015

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
---	----------------------------

Mr.G.S.Godbole, Sr.Counsel I/b Mr.S.S.Kothari
for the appellant

CORAM : K.K.TATED, J.
DATED : 14/10/2015

PC:

- 1 Heard the learned counsel for the appellant.
- 2 Admit, on the following substantial question of law:

“a) Whether the Ld.Judge of Lower Appellate Court failed to appreciate that the Orig.Plaintiff/Respondent No.1 had filed one Regular Civil Suit No.165 of 1986 seeking relief of injunction and declaration in respect of the same suit property which the Ld.Judge was pleased to dismiss the said suit, the Suit seeking removal of encroachment upon the same property is hit by the provision of constructive Res-Judicata?

b) Whether the Ld.Judge of the Lower

Appellate Court was completely justified in overlooking that as per the provision of the Section 83 of the Indian Evidence Act, 1982, the surveyor who carried out measurement will have to be examined before the court to prove the correctness of the map drawn by him?”

3 Appellants to file private paper book within one year from today, failing which the appeal shall stand dismissed without further reference to the court.

4 Printing and filing of Roznama is dispensed with.

(K.K.TATED, J.)