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S.A. No.202.13

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 202 OF 2013

Radhakishan s/o Narayan Khetri ..APPELLANT

VERSUS

Mohan s/o Pandurang Choke ..RESPONDENT

Ms Geeta Deshpande, Advocate for appellant;
Mr N.R. Pawade, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 26th August, 2014

ORAL ORDER

In paragraph 8 of the judgment delivered by the Trial Court in Regular Civil Suit No.34 of 2008, the Trial Court has taken note of the fact that P.W.2 Bhimrao Pawar, who is working in the office of Taluka Inspector of Land Records, has measured land of the plaintiff. Based on the said measurement, the Trial Court has inferred that the defendant has encroached upon the land of the plaintiff. The fact remains that the land of the defendant was not measured.

2. Having regard to the above and upon submissions made by the appellant, this Court, on 24th September, 2013, has passed an order that

both the Counsel are ready and willing to make joint application for appointment of Taluka Inspector of Land Records as Court Commissioner to measure Gat No.86 as well as Gat No.87, i.e. the lands of the appellant and the respondent.

3. During the course of hearing, learned Counsel for both parties, while responding to the Court's query, are in agreement that an application for joint measurement can be moved and the fee for the measurement will be equally shared by the plaintiff and the defendant.

4. In view of above consensus, the parties shall make an application to the Taluka Inspector of Land Records for joint measurement, within a period of two weeks from today. The formalities for making application be completed by the appellant before this Court. On making such application to which the respondent has consented, Taluka Inspector of Land Records is directed to assess the said application and decide the measurement fee and inform both the parties, i.e. appellant and respondent to deposit the measurement fee by dividing the total fee in two equal parts. Upon such demand, the parties shall deposit the measurement fee within a period of two weeks thereafter.

5. Upon receipt of the measurement fee, the Taluka Inspector of Land Records shall measure lands bearing Gat Nos.86 and 87, situated at

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village Kekarjawala, Taluka Manwat, which is subject-matter of the present appeal and shall submit report within a period of six weeks thereafter before this Court through the office of the Government Pleader, High Court Bench at Aurangabad.

6. After receipt of the report, this Court will consider the application of provisions of Rule 27 read with Rule 28 of Order XLI of the Code of Civil Procedure, in the matter of grant of permission for production of additional evidence in support thereof.

7. Stand over to 7th October, 2014.

8. Interim order to continue till then.

(N.W. SAMBRE, J.)

amj