IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

SECOND APPEAL NO.381 OF 2011

Shaikh Afzal s/o Shaikh Budhan ..APPELLANT

VERSUS

Shivaji s/o Nivrutti Ghodke ..RESPONDENT

Mr A.D. Kasliwal, Advocate for appellant;

CORAM : NITIN W. SAMBRE, J.

DATE: 14th SEPTEMBER, 2017

ORAL ORDER :

Heard learned Counsel for the appellant, who suffered decree for possession and mandatory injunction in Regular Civil Appeal No.69 of 2007 vide judgment and decree dated 22nd June, 2011 being original defendant.

2. By the impugned judgment and decree, present appellant-original defendant in Special Civil Suit No.117 of 2005 was directed by the appellate Court to remove at his cost encroachment by demolishing the compound wall constructed by him

on the boundaries of suit plot No.12 out of land Gat No.130 admeasuring 50 ft., east-west and 40 ft., south-north, having Grampanchayat Property No.1671 situated at village Satara, Taluka and District Aurangabad.

- 3. The appeal, in my considered view, needs admission on the following question of law:
- (a) In absence of measurement of the suit property, particularly an expert evidence to that effect, whether lower appellate Court was right in decreeing the suit against the present appellant?
- (b) As contemplated under Section 42 of the Evidence Act, whether lower appellate Court was right in recording findings that lay out plan (Exhibit-48), which was proved in Special Civil Suit No.117 of 2005 has to be considered as admitted without examining Architect, when the appellant was not confronted with such document during the course of recording of evidence?

- 4. Hence, Admit.
- 5. Paper book be filed within six months from today, failing which, the appeal shall stand dismissed without further reference to the Court.

(NITIN W. SAMBRE, J.)

Tupe