

**IN THE HIGH COURT OF KARNATAKA, BANGALORE**

**DATED THIS THE 09<sup>TH</sup> DAY OF MARCH 2006**

**BEFORE**

**THE HON'BLE MR. JUSTICE K.SREEDHAR RAO**

**REGULAR SECOND APPEAL NO.560/2005(INJ)**

**BETWEEN:**

RAJENDRA PAYAPPA RAMGOUDA  
MAJOR, OCC; BUSINESS  
R/O KONAWAL GALLI, BELGAUM  
REP. BY PA HOLDER A.A.NIJAMI  
70 YEARS, OCC: BUSINESS  
R/O BHADKAL GALLI  
BELGAUM-590 007. ... APPELLANT

(By Sri RAVI G SABHAHIT, ADV.,)

**AND :**

VASANTH RAMACHANDRA SHINDE  
MAJOR, BUSINESS  
R/O PLOT NO.66, SECTOR NO.9  
MALMARUTI EXTENSION,  
BELGAUM-590 007. ... RESPONDENT

(By Sri RAVI B NAIK, ADV.,)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST  
THE JUDGEMENT & DECREE DTD 7.2.05 PASSED IN  
R.A.NO.205/02 ON THE FILE OF THE II ADDL. CIVIL  
JUDGE (SR.DN), BELGAUM, DISMISSING THE APPEAL AND  
CONFIRMING THE JUDGEMENT AND DECREE DT.17.9.02  
PASSED IN OS 468/99 ON THE FILE OF THE PRL. CIVIL  
JUDGE (JR.DN), BELGAUM.

THIS APPEAL COMING ON FOR ADMISSION THIS  
DAY, THE COURT DELIVERED THE FOLLOWING :-



JUDGMENT

The appellant-plaintiff filed a suit for possession of the suit property which measures 8'x100' in R.S.No.1061 of Belgaum. The land R.S.No.1061 was totally measuring 1 acre 36 guntas. The plaintiff converted the land for non-agricultural use. Formed 31 house sites. It is said that a portion of the area described as 8'x100' on the western side is encroached by the defendant. Both the courts have concurrently held that the plaintiff has failed to prove encroachment and dismissed the suit and the appeal. Hence, the second appeal.

2. The plaintiff in order to prove encroachment has examined himself. A Surveyor was appointed as a Court Commissioner. Ex.P2 is the certified copy of the sketch. From the discussion of the judgment, it discloses that the defendant-respondent has filed objections to the Commissioner's Report. The Commissioner is not examined by the plaintiff to prove the disputed report. In the absence of Commissioner's Report,



there is absolutely no evidence adduced by the plaintiff to prove encroachment. Of course, in the Commissioner's Report, it is stated that there is encroachment larger than the one mentioned by the plaintiff but, to prove the said report, the Commissioner ought to have been examined. In the absence of examination of the Commissioner, the report cannot be accepted as evidence when it was disputed. In that view, the concurrent findings are sound and proper. No substantial question of law is involved in the appeal. Appeal dismissed.

Sd/-  
Judge

Nv