

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APEAL FROM ORDER NO.32 OF 2020
WITH
CIVIL APPLICATION NO.8712 OF 2020**

Haridas Ramkrushna Solanke,
Age : 50 years, Occ. Agri.,
r/o. Anjandoh, Tq.Dharur,
Dist. Beed

..Appellant

Vs.

Ram Pandhari Solanke,
Age : 50 years, Occ. Agri.,
r/o. Anjandoh, Tq. Dharur,
Dist. Beed and ors.

..Respondents

Mr.K.J.Suryawanshi, Advocate for appellant
Mr.G.V.Mohekar, Advocate for respondent nos.1 and 2

**CORAM : R.G. AVACHAT, J.
DATE : AUGUST 17, 2021**

ORDER :-

Heard.

2. The original defendant is in appeal before this Court. The suit filed by respondent nos.1 and 2/plaintiffs for removal of encroachment and possession thereof was dismissed by the trial Court. From the averments in the matter, it appears that it is a case of encroachment of agricultural land. Before the trial court, no surveyor was appointed to measure the land and ascertain the alleged

encroachment. On dismissal of the suit, original plaintiffs preferred an appeal. The appellate Court, vide impugned judgment and order dated 31.10.2020, allowed the same with a direction to the trial Court to appoint Surveyor from the office of T.I.L.R., for local inspection and then to decide the suit on merit.

3. According to learned counsel for the appellant, the appellate Court ought to have framed issues and referred them for trial to the trial Court and solicit findings thereon.

4. The phraseology of Order XL Rule 25 of the Code of Civil Procedure indicates the discretionary jurisdiction of the appellate Court to pass such order, as was suggested and expected by learned counsel for the appellant herein.

5. In view of this Court, since it was a suit for removal of encroachment and it has been dismissed for want of proof of alleged encroachment, the appellate Court is justified in remanding the suit to the trial Court with a direction to appoint Surveyor from the office of T.I.L.R. for measurement of the land and then decide the suit on its own merit.

6. In view of the above, I find the Appeal From Order to be without merit. The same is, therefore, dismissed. Civil Application stands disposed of.

[R.G. AVACHAT, J.]

KBP