

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

**SECOND APPEAL NO.70 OF 2021 WITH
CIVIL APPLICATION NO.1547 OF 2021**

Smt. Saraswatibai Anantrao Patil
and others

... APPELLANTS

VERSUS

Gopal Namdeo Akalade
and another

... RESPONDENTS

.....
Mr. D.S. Bagul, Advocate for appellants
.....

CORAM : R. G. AVACHAT, J.

DATE : 6th JUNE, 2022.

PER COURT :

Heard Mr. Bagul, learned counsel for the appellants. This is original plaintiffs' Second Appeal. They have been unsuccessful, first in their suit, being Regular Civil Suit No.117/2002 for the relief of mandatory injunction for removal of encroachment made by the respondents on their land, specifically described in the plaint. They have also been unsuccessful in the first appeal preferred against the judgment and decree dismissing their suit.

2. It was a suit for removal of encroachment. Learned counsel for the appellants would submit that, the suit property was given to the father of the plaintiffs on lease by the Government. Sale of part of the said property was, therefore, illegal. According to learned counsel, the suit property has been specifically described in the plaint. The revenue record thereof is in favour of the appellants/ plaintiffs. Witnesses were examined in proof of demolition of part of the appellants/ plaintiffs' premises by the respondents – defendants and making construction thereon. According to learned counsel, a substantial question of law has thus been involved in the appeal.

3. Considered the submissions advanced. Admittedly, on one side of the suit property, property belonging to the respondents - defendants exists. The suit was filed for mandatory injunction for removal of encroachment made by the respondents – defendants on the suit property. Admittedly, neither before the trial Court nor before the first appellate Court the appellants – plaintiffs moved any application for appointment of an expert/ Surveyor

for measurement of the suit property with a view to bring on record dimensions of the alleged encroachment. Needless to mention, appointment of a Surveyor to carry out measurement of the suit property and properties adjoining thereto is a must so as to make out a case of encroachment, if any. The appellants – plaintiffs shall blame themselves for having not urged for carrying out measurement of the suit property so as to make out the case of encroachment. As such, no substantial question of law is involved in the Second Appeal. The appeal is, therefore, liable to be dismissed. The same is dismissed. Consequently, Civil Application stands dismissed.

**(R. G. AVACHAT)
JUDGE**

fmp/-