



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

**SECOND APPEAL NO.85 OF 2025
WITH
CIVIL APPLICATION NO.3609 OF 2023**

Maroti s/o. Kondiba Dhawale,
(Died) Through its LR's.

1-A Sagarbai w/o Maroti Dhawale,
Age 51 years, Occ. Household,
R/o. Umari, Ta. Ardhapur,
Dist. Nanded.

1-B Parmeshwar s/o Maroti Dhawale,
Age 36 years, Occ. Agri.
R/o. As above

1-C Sonaji s/o. Maroti Dhawale,
Age 34 years, Occ. Agri.
R/o. As above.

1-D Shailesh s/o Maroti Dhawale,
Age 30 years, Occ. Agri.
R/o. As above.

..Appellant
(Orig. Defendant No.1.)

Versus

1. Babarao s/o. Mahadji Mudhal (died through LR's.)

1-A Yamunabai w/o. Babarao Mudhal,
Age. 63 years, Occp. Household

1-B Atamaram s/o. Babarao Mudhal
Age. 25 years, Occp. Agril.,

1-C Madhav s/o. Babarao Mudhal,
Age. 35 years, Occp. Agril.,
All R/o. Umari, Ta. Ardhapur,
Dist. Nanded.

..Respondents
(Orig. Plaintiffs)

...
Mrs. Maya R. Jamdade, Advocate for Appellant.

Mr. G. R. Ingole, Advocate for Respondent Nos.1 to 3.

...

CORAM : S. G. CHAPALGAONKAR, J.
DATED : 21st APRIL, 2025.

ORDER:-

1. The appellant/original defendant no.1 impugns judgment and decree dated 13.04.2022 passed by District Judge-2, Nanded in Regular Civil Appeal No.61/2015, thereby upholding judgment and decree dated 20.06.2012 passed by Civil Judge, Junior division, Ardhapur, Dist. Nanded in Regular Civil Suit No.76/2009 (Old RCS No.524/2007). (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).
2. The respondents/original plaintiff instituted suit for recovery of possession of encroached portion of land from Block No.68 situated at village Umari, Tq. Ardhapur, Dist. Nanded against appellants/defendants contending that defendants are owners of land to the extent of 60R each from said block. However, defendant no.1 encroached to the extent of 25R on Eastern side and defendant no.2 on portion of 30R land from Northern side on the land owned by plaintiff. The plaintiff got land measured from Taluka Inspector of Land Records on 17.08.2004. The report of measurement clearly reveals encroachment made by defendants. The plaintiff requested defendants to hand over possession of encroached area, however, they refused. Hence, filed present suit.
3. The defendants refuted plaintiff's claim by filing written statement denying factum of encroachment. According to them,

they have derived title of possession of land from their vendors/predecessor in title and continued in possession. They denied correctness of measurement map and report dated 25.01.2005. They further contend that their possession is continued for more than 30 years, hence, suit is barred by limitation. In order to prove encroachment, plaintiff relied upon evidence of Cadastral Surveyor, who testified that in pursuance to application made by original plaintiff, he carried measurement on 25.01.2005 and found encroachment made by defendant nos.1 and 2. Accordingly, he submitted his measurement report. He deposed that he had issued notices upon original defendant nos.1 and 2 and adjoining owners and in presence of two independent panchas and Police Patil, carried measurement and jotted down panchanama. Apparently, defendants failed to cross-examine Cadastral Surveyor on material aspect.

4. Mrs. Jamdade, learned Advocate appearing for appellant submits that defendants were not served with notice of measurement. The measurement was carried behind their back. Secondly, she submits that initially suit was instituted at Civil Judge, Junior Division at Nanded and then transferred to Civil Judge, Junior Division, Ardhapur. Thereafter, defendants were not given sufficient opportunity to defend their case. She would

submit that claim of plaintiff is based on defective measurement map, which cannot be accepted as gospel truth.

5. I have considered submission advanced by learned Advocate appearing for appellant. Apparently, plaintiff relied upon measurement map, which has been duly proved through evidence of Cadastral Surveyor. Perusal of cross-examination conducted by defendants would show that there is no suggestion about non-service of notice. No specific defect in measurement map has been brought to the notice of this Court. Nothing is elicited from cross-examination of Cadastral Surveyor that would constitute ground to discard his report. Therefore, submissions that measurement was carried behind back of defendants cannot be accepted. Both the Courts have rightly relied upon evidence of Cadastral Surveyor and measurement map submitted by him and concluded about encroachment made by defendants on plaintiff's land. Therefore, no substantial question of law can be made out in this regard.

6. Although Mrs. Jamdade, learned Advocate appearing for appellant submits that defendant was not given sufficient opportunity after transfer of proceeding, record indicates that defendant was duly represented by Advocate. He cross-examined witnesses. Even, advanced final submissions. Therefore, contention raised on behalf of defendant that he was not given

sufficient opportunity to defend case after transfer of matter to Civil Judge, Junior Division, Ardhapur cannot be countenanced.

7. In view of concurrent findings of facts recorded by both Courts, which are based on evidence, no substantial question of law can be carved out in this Appeal. Hence, Second Appeal sans merit and accordingly stands dismissed.

8. In view of dismissal of Second Appeal, nothing survives in Civil Application and same is accordingly disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2025