



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

51 APEAL FROM ORDER NO. 75 OF 2025

DYANESHWAR SHANKAR PATIL

VERSUS

SHRIDHAR C. PATIL DIED THRU. LRS. SUGANDHABAI S. PATIL DIED THRU.
LRS. KAILAS S. PATIL AND ORS.

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S. K. Chavan, Advocate for the Appellant

Mr. Dhananjay Mane, Advocate for Respondent Nos.1B to 1G

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CORAM : SHAILESH P. BRAHME, J.

DATE : 06.11.2025

PER COURT :-

1. Heard both sides. Heard finally at the admission stage.
2. The appeal is directed against the order dated 30.10.2022 passed in Regular Civil Appeal No.21 of 2016, thereby remanding the matter to the Trial Court and granting opportunity to the plaintiffs to lead additional evidence.
3. Learned counsel for the appellant submits that impugned order is discriminatory and the appellant-defendant should have been given equal opportunity of hearing before the Trial Court. It is submitted that the

measurement report has been placed on record and the appellant would be required to lead the evidence. It is submitted that the impugned order is perverse to the extent that only the respondent was given an opportunity.

4. Per contra, Mr. Mane, learned counsel submits that there is no need to extend any opportunity to the appellant to lead any evidence. The lower Appellate Court has already taken care of by permitting the appellant to conduct cross-examination of the witness. It is submitted that the report of the joint measurement was not available when the Trial Court decided the matter and only to that extent, the matter is relegated to the Trial Court.

5. The respondent had filed suit bearing R.C.S.No.77 of 2020 for the relief of perpetual injunction and possession. It was dismissed vide judgment dated 27.11.2014. Being aggrieved, RCA No.21 of 2016 was preferred by the respondent. Application Exhibit-13 was pressed into service for leading additional evidence. The lower Appellate Court thought it fit to relegate the matter to the Trial Court for leading evidence in view of the report of joint measurement which was placed on record for the first time in the lower Appellate Court. Admittedly, the report of the joint measurement was not available in the Trial Court. It was made available for the first time in the

lower Appellate Court in view of application Exhibit-13. In the supervening events, the matter was relegated to the Trial Court.

6. Both sides do not dispute that the order of remand is legal and proper. Once the opportunity is given to one of the parties to lead evidence, I do not find any reason to prevent adversary to lead evidence. The impugned order is discriminatory *ex-facie*. Mere granting of liberty to conduct cross-examination would not be sufficient. I therefore find that the impugned order needs to be modified.

7. The Appeal From Order is partly allowed. The impugned judgment and order stands modified only to the extent that both the parties shall be at liberty to lead the additional evidence. The lower Appellate Court is requested to decide the appeal expeditiously and as early as possible not more than eight (8) months.

8. Needless to mention that the parties would be at at liberty to apply for amendment to the pleadings, if required.

(SHAILESH P. BRAHME, J.)