



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

**58 SECOND APPEAL NO. 276 OF 2024**

Swati Anil Dhawle

VERSUS

Abhaykumar Nandlal Patni And Ors

...

Advocate for Appellant : Mr. Barde Parag Vijay

Advocate for Respondents No.1 to 4 : Mr. V. I. Thole

...

**WITH  
CIVIL APPLICATION NO. 838 OF 2023  
IN SA/276/2024**

...

**CORAM : ARUN R. PEDNEKER, J.**

**Dated : December 08, 2025.**

**ORAL ORDER :-**

1. Heard.

2. The learned Counsel for the appellant submits that the appellant challenges the orders passed by the Trial Court as well as the Appellate Court, whereby directions have been issued to remove an encroachment to the extent of 250 square meters, and handover possession of the encroached area to the plaintiff.

3. The brief facts of the matter are summarized as under : -

The suit property pertains to Plot No. 3, admeasuring 22 x 44 meters (approximately 990 square meters), situated at Aurangabad. Defendant No. 3 sold the suit property to the plaintiffs on 12/03/1996, and they were placed in possession of the plot. It is alleged that when the plaintiffs intended to commence construction for business purposes, the defendants encroached upon an area of approximately 250 square meters of the plot. Consequently, the plaintiffs filed Regular Civil Suit No. 771/2001 seeking removal of

encroachment and possession.

4. Upon considering the pleadings and the material placed on record, the Trial Court framed the following issues and recorded its findings thereon as under : -

| <u>ISSUES</u>                                                                                                                                                                | <u>FINDINGS</u>                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| (1) Do plaintiffs prove that they are owner of suit land ?                                                                                                                   | .....Yes                             |
| (2) Do the plaintiff prove that defendant No.1 and 4 have encroached upon the suit land to the extent of 250 Sq.Mtrs. and constructed a hut and eating place over the same ? | .....Yes                             |
| (3) Does the defendant No.4 prove that she is the owner of plot No.2 of Gut No.105 and 106 ?                                                                                 | .....Yes                             |
| (4) Whether plaintiffs are entitled for mesne profit ? If yes, at what rate and for what period ?                                                                            | .....Yes                             |
| (5) Whether plaintiffs are entitled to relief claimed ?                                                                                                                      | .....Yes                             |
| (6) What order or decree ?                                                                                                                                                   | .....The suit is decreed with costs. |

5. After appreciating the evidence on record, the Trial Court held that the plaintiffs are the owners of the suit property and that defendants No. 1 and 4 have encroached upon an area admeasuring 249 square meters, as reflected in the Measurement Map at Exhibit 116. The suit was accordingly

decreed with costs, and directions were issued to remove the encroachment and hand over vacant possession of the encroached portion within two months.

6. The said decree was challenged in Regular Civil Appeal No. 310/2016. The Appellate Court, after reappreciating the evidence, framed the following points for consideration and recorded its findings thereon as under : -

|     | <u>POINTS</u>                                                                                                                                                            | <u>FINDINGS</u>       |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| (1) | Do the plaintiff prove that they are the owner of the suit plot ?                                                                                                        | ...In the affirmative |
| (2) | Do the plaintiff prove that defendant No.1 and 4 have encroached upon the suit plot to the extent of 250 Sq.Mtrs. And constructed a hut and eating place over the same ? | ...In the affirmative |
| (3) | Does the defendant No.4 prove that she is the owner of plot No.2 of Gut No.105 and 106 ?                                                                                 | ...In the affirmative |
| (4) | Whether plaintiffs are entitled for mesne profit ?                                                                                                                       | ...In the affirmative |
| (5) | Whether plaintiffs are entitled for the relief claimed ?                                                                                                                 | ...In the affirmative |
| (6) | Whether the impugned judgment and decree requires interference by this Court ?                                                                                           | ...In the negative    |
| (7) | What order and decree ?                                                                                                                                                  | ...As per final order |

7. The Appellate Court confirmed the findings of the Trial Court, holding that the plaintiffs are the owners of the suit property and that defendants No.1 and 4 have encroached to the extent of 250 square meters. The appeal was accordingly dismissed.

8. Challenging the concurrent findings of both Courts, the present Second Appeal is filed.

9. The learned Counsel for the appellant submits that the TILR measured the suit plot and recorded encroachment upon the plaintiffs' land. He points out that during the measurement, only defendant No. 1 was present, and this is evident from the cross-examination of P.W.2 (TILR), who admitted that notice was issued only to defendant No. 1 and not to defendant No. 4. The TILR in his cross deposed that only defendant No.1 was issued notice of survey. He submits that defendants No. 1 and 4 are husband and wife, residing in the same premises, and that notice to defendant No. 1 cannot be treated as notice to defendant No. 4. He contends that the TILR report is unreliable as against defendant No. 4, and if the report is discarded, the foundation of the judgment collapses, thereby raising a substantial question of law.

10. Defendants No. 1 and 4, however, are husband and wife residing together. Defendant No. 4 was subsequently added as a party to the suit. Notice was served upon defendant No. 1 during the survey, and when both defendants reside together, defendant No. 4 cannot claim prejudice merely on the ground that separate notice was not issued to her. No failure of justice is demonstrated, nor does any substantial question of law arise from the concurrent findings based on proper appreciation of evidence.

11. In view of the above, no substantial question of law arises for consideration in this Second Appeal. The Second Appeal is accordingly dismissed. Pending Civil Application also stands disposed of.

( ARUN R. PEDNEKER, J. )

*vj gawade/-.*