



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

SECOND APPEAL NO. 222 OF 2025

WITH

CIVIL APPLICATION NO. 15311 OF 2023

Ganpat s/o Wamanrao Gaikwad

Age : 58 years, Occ: Agril.;

R/o: Dighol Islampur,

Tq. Sonpeth, Dist. Parbhani.

.. Appellant

**Versus**

Sunil s/o Guruprasad Dube

Age : 40 years, Occu.: Agril.,

R/o: Dighol Islampur,

Tq. Sonpeth, Dist. Parbhani.

.. Respondent

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\* **Mr. Ameya N. Sabnis**  
Advocate for the Appellant.

\* **Mr. Pawankumar S. Agrawal**  
Advocate for the Respondent.

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**CORAM : SHAILESH P. BRAHME, J.**

**DATE : 17<sup>th</sup> JUNE 2025**

**FINAL ORDER :**

. Heard both sides.

2. Appellant is challenging concurrent findings of facts determined by Courts below. He is original Defendant who suffered decree of possession of encroached portion of 16R and direction to conduct inquiry under Order 20 Rule 12 of the Code of Civil Procedure.

3. Both the parties are the purchaser of different parcels of the land from Survey No.167 measuring 5H 41R which was owned by Raghunath Haribhau Shinde. Appellant purchased 80R of land from the selfsame land in the year 1996 and thereafter 62R in the year 1998. Respondent purchased 38R land from the original owner - Mr. Shinde on 21.12.2000. Land purchased by Respondent is on the western side. In the measurement conducted by Revenue Officer, it revealed that Appellant encroached on 16R of land which was a cause for filing suit.

4. Appellant contested the suit contending that boundaries shown in sale deed dated 29.12.2000 are incorrect. The measurement conducted is also incorrect. The location of the lands of the Respondent and the original owner are incorrectly shown. Its an apparent to grab land of the Appellant.

5. Parties led oral evidence before the trial Court. The oral evidence of PW-2 - Raghunath Rambhau Devkate is relevant. Application for measurement is at Exhibit-48; order of Tahsildar is at Exhibit-49 and map is at Exhibit-50.

6. Both the Courts below held that Appellant encroached on 16R of land relying on measurement map and deposition of PW-2.

7. Learned Counsel Mr. Ameya Sabnis submits that the measurer measured only 38R of land belonging to the Respondent which was requested for. The area of land occupied by the Appellant was not measured. The measurement is one sided and cannot be relied. It is submitted that averments of examination-in-

chief and cross of PW-2 have not been properly appreciated. Courts should have exercised the powers under Order 26 Rule 9 of the Code of Civil Procedure, resorting to joint measurement. It is further contended that corrections in the sale deed dated 21.12.2000 are unilateral and cannot bind the application.

8. Learned Counsel has pressed into service substantial questions of law at A to E mentioned in memo of Second Appeal.

9. Per contra, learned Counsel Mr. Pawankumar Agrawal would submit that Appellant was consenting party for the measurement and he was present for the measurement. My attention is adverted to finding recorded by the trial Court as well as Lower Appellate Court. It is contended that measurer followed due procedure of law which is observed by Lower Appellate Court in paragraph no.22 and 26 of the judgment elaborately. It is contended that Appellant did not challenge the measurement. Referring to the deposition of the PW-2, it is contended that no fault can be found with the impugned judgments.

10. I have gone through panchanama Exhibit-47; application Exhibit-48, order of Tahsildar at Exhibit-49 and map at Exhibit-50. Though order shows that 38R of area of Survey No.167 was directed to be measured, it is not that measurement was conducted behind back of the Appellant. Panchanama at Exhibit-47 and application at Exhibit-48 show adjoining land owners were apprized of the measurement and they were present. Appellant's signature is appearing on Exhibit-47 and 48. This falsifies the

claim of the Appellant that in his absence, measurement was conducted.

11. Appellant could have objected the measurement. He also could have resorted to Order 26 Rule 9 of the Code of Civil Procedure. But no steps were taken and now he is making capital that only 38R of land was measured. The evidence of PW-2 does not show any serious infirmity in conducting measurement. Both the Courts below rightly appreciated material placed on record. The grievance of the Appellant in respect of rectification of boundaries in sale deed dated 21.12.2000 has no merit. He is not concerned with sale deed. If any prejudice is caused to him, he could have approached concerned authority or Court to ventilate the grievance.

12. Reliance is placed by Mr. Ameya Sabnis on the judgment of **Kolhapuri Bandu Lakade Vs. Yallappa Chinappa Lakade**, 2011(3) Mh.L.J. 348. I have considered paragraph nos. 14 to 17 of the said judgment. In that case, Writ Petition was arising out of rejection of application for appointment of Court Commissioner. The propriety and significance of Court Commissioner is narrated in judgment. In the case at hand, already there was measurement. Appellant did not resort to Order 26 Rule 9 of the Code of Civil Procedure in the present case. The ratio cannot be made applicable.

13. There are concurrent finding of facts. No substantial question of law is involved in the present appeal. The substantial questions of law pressed into service by the Appellant have no

merit. Hence I pass following order :

**ORDER**

1. Second Appeal is dismissed.
2. Reasons to follow.
3. After pronouncement of the order, learned Counsel for Appellant prays for protecting the possession of the Appellant for further period, as the Appellant wants to approach the Hon'ble Supreme Court. It is contended that, there is long standing possession of the Appellant and already warrant for possession has been issued and likely to be executed.
4. Learned Counsel for sole Respondent opposes the submissions.
5. As the Appellant is in possession, it is desirable to protect the possession for certain period. The decree of the learned trial Court shall not be executed for the period of four (4) weeks from today. After expiry of the same, the protection shall automatically stands vacated without reference to the Court.

**[ SHAILESH P. BRAHME ]**  
**JUDGE**

NAJEEB..