

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.251 OF 2025
WITH
INTERIM APPLICATION NO.7643 OF 2025**

1. Vikas Dnyandeo Patil,
Age: 44 Years, Occupation: Agriculture,
 2. Prakash Dnyandeo Patil,
Age: 40 Years, Occupation: Agriculture,
 3. Kusum Dinkar Patil,
Age: 52 Years, Occupation: Agriculture,
All Appellants R/o. Borgaon,
Tal. KavatheMahankal, Dist. Sangli.Appellants
- Vs.
1. Jagannath Limbaji Mali,
Deceased Thnrough LRs.
 - 1.1 Santosh Jagannath Mali,
Age: 50 Years, Occupation: Agriculture,
 - 1.2 Rukmini Vitthal Chougule,
Age: 53 Years, Occupation: Agriculture,
 - 1.3 Shankar Jagannath Mali,
Age: 51 Years, Occupation: Agriculture,
 - 1.4 Dattatray Jagannath Mali,
Age: 48 Years, Occupation: Agriculture,
All Respondent Nos.1.1 to 1.4
R/o. Borgaon, Tal. KavatheMahankal,
Dist. Sangli.
2. Kondabai Pandurang Mali, (Deleted)
Age: 72 Years, Occupation: Agriculture,
R/o. Near Vitthal Temple, Ashta,
Tal. Walwa, Dist. Sangli.

- 3 Rakmabai Ganpati Mali, (Deleted)
Age: 70 Years, Occupation: Agriculture,
R/o. Near Vitthal Temple, Ashta,
Tal. Walwa, Dist. Sangli.
4. Indabai Vasant Mudhale,
Age: 67 Years, Occupation: Agriculture,
R/o. Malgaon, Tal. Miraj, Dist. Sangli.
5. Vimal Uttam Mali,
Age: 65 Years, Occupation: Agriculture,
R/o. Male, Tal. Panhala, Dist. Kolhapur.
6. Shakuntala @ Thakubai Datta Chougule,
Age: 62 Years, Occupation: Agriculture,
R/o. Nanegaon Road, Devlali Camp,
Tal. Nashik, Dist. Nashik.

.....Respondents

Mr. Rahul B. Khot, for the Appellants.

Mr. Ramdas Shelke, for the Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON: 1st OCTOBER 2025

PRONOUNCED ON : 7th OCTOBER 2025

JUDGMENT :-

1. The Appellants/original defendant Nos.1 to 3 takes exception to Judgment and Decree dated 20th February 2025 passed by District Judge, Sangli in Regular Civil Appeal No.257 of 2018, whereby learned District Judge quashed and set aside Judgment and Decree dated 23rd August 2018 passed by Civil Judge, Junior Division, Kavathe-Mahankal in Regular Civil Suit No.54 of 2008 and remanded suit to trial Court with direction to appoint Court Commissioner for joint measurement of suit property.

2. Respondent No.1/plaintiff instituted suit seeking decree of possession of encroached area of 7 gunthas out of Gat No.55. It is contention of plaintiff that he is owner of land Gat No.55. It was originally part of Survey No.224/1. Total 7 gunthas area from Survey No.224/3 and 224/5 has been merged in Gat No.55.

3. The defendants claimed that they have purchased Gat No.7 under registered sale deed. On 26th April 2025, the measurement was carried out through cadastral surveyor, who reported that north side bandh is part of land owned by defendants. In said measurement, plaintiff was found in possession of encroached area of 7 gunthas out of Gat No.7. Accordingly, they instituted suit which has been decreed and counter claim of plaintiff is dismissed.

4. The trial Court dismissed present suit of plaintiff holding that plaintiff failed to prove alleged encroachment by defendant Nos.1 to 3.

5. Aggrieved plaintiff filed Regular Civil Appeal No.257 of 2018 before District Judge at Sangli, who pleased to set aside Judgment and Decree of trial Court and remanded matter back with direction that trial Court to appoint Court Commissioner to do joint

measurement of suit property, i.e., Gat No.55 and Gat No.7 and submit detail report pertaining to encroachment area, if any.

6. Aggrieved defendants have filed present Appeal from Order assailing order of remand. Learned counsel appearing for Appellants submits that in Regular Civil Suit No.64 of 2005, the Appellants are held as owner of Gat No.7. The cross-objection filed by Respondents is rejected. The measurement map prepared on 26th April 2005 is accepted by Courts and decree of permanent injunction is granted against plaintiffs. Therefore, there was no reason for directing re-measurement. It is further submitted that during consolidation scheme, 0.7 R area is reduced from the plaintiffs' portion. The consolidation scheme is finalized in the year 1980. There is no challenge to the scheme. Therefore, the issue cannot be reopened by the Civil Court.

7. Per contra, learned Advocate appearing for Respondents supports the impugned order.

8. Having considered submissions advanced and on perusal of reasons adopted by learned District Judge in the impugned Judgment

and Decree, it can be observed that previous suit instituted by defendants was based on measurement dated 26th April 2005. Measurement was made pursuant to application for fixation of boundaries of Gat No.7. In that map, area to the extent of 7 gunthas was shown in red color in possession of owner of Gat No.55 and in blue color is shown in possession of owner of Gat No.7. On the basis of said measurement map, decree is passed in Regular Civil Suit No.54 of 2008. The Appellate Court further observed that from close scrutiny of measurement map, it can be safely concluded that red color marked area of 7 gunthas is not part of Gat No.55, similarly blue color marked area of 7 gunthas is not part of Gat No.7.

9. The Appellate Court has further made reference to admission of P.W.No.1 Dhananjay Gopinath More/Cadastral Surveyor that he had carried out measurement of Gat No.7 only. Learned District Judge, therefore, observed that joint measurement of Gat Nos.7 and 55 is necessary to decide controversy between the parties.

10. In light of aforesaid findings, Appellate Court found it necessary to remand matter to trial Court with an opportunity to both parties to adduce evidence pertaining to encroached area of suit

property and directions to appoint Court Commissioner for joint measurement of Gat No.55 and Gat No.7.

11. It is trite that when there is a dispute as to boundaries, it is necessary that both the adjoining lands/gat numbers shall be measured and then area under encroachment can be ascertained. In present case, although Appellants heavily relied upon decree passed in previous suit, as observed by learned District Judge, it was based on measurement map in relation to Gat No.7 only. The said measurement was made on application of defendant No.1 for fixation of boundaries of Gat No.7. At that time, there was no occasion to measure Gat No.55.

12. Apparently, trial Court dismissed the suit of plaintiffs relying upon measurement map, which was in respect of Gat No.7. The admission of PW.No.1 Dhananjay Gopinath More that he has measured only Gat No.7 brings on record the technical glitch.

13. In light of aforesaid circumstances, the view taken by learned District Judge that joint measurement is necessary and for that purpose, remand of suit with an opportunity to both sides to bring evidence as to the encroachment cannot be faulted.

14. In result, no question of law made out to cause interference in the order impugned.

15. Accordingly, Appeal from order stands dismissed. Eventually, pending Interim Application, if any, stands disposed of.

(S. G. CHAPALGAONKAR, J.)

Digitally
signed by
RAJU
DATTATRAYA
GAIKWAD
Date:
2025.10.07
19:15:39
+0530