

impugned Judgment and Decree dated 17.02.2025.

4. Learned Counsel for the Appellants invited this Court's attention to the admissions of the P.W. No. 4-Nimtana Surveyor recorded by the Trial Court in paragraph 51 of the judgment where it is admitted that there is no division record of Survey No. 249/1/1 in his office and also that while carrying out the measurement, which is apparently the basis for granting decree, the surveyor was not having any record of division or internal cultivation.

5. It is further submitted that the decree for *mesne profits* is granted without there being any pleadings, prayers or issue regarding the same.

6. Perusal of the plaint shows that the Respondent No. 1-Plaintiff himself has pleaded that the suit property admeasuring 21 R from out of survey no. 249/1/1 is purchased under sale deed in which wrong boundaries are written by inadvertence and mistake of the parties.

7. It is asserted by the learned Counsel for the Appellant that both Plaintiff and Defendant No. 1 has purchased parts of the same survey number. He is relying on the judgement of **Ganapati Madhav Sawant (dead) through his Lrs vs Dattur Madhav Sawant [(2008) 3 SCC 183]** to urge that in absence of a prayer, *mesne profits* could not have been granted.

8. Perused the Judgments of the Trial Court and Appellate Court.

Perused the plaint.

9. Arguable questions, meeting with the requirements under section 100 of the Civil Procedure Code, 1908, are raised.

10. **Admit** on the following substantial questions of law:

(a) Whether the Court below were justified in decreeing the Suit for possession of alleged encroached area, when the sale deed of the Plaintiff himself mentioned wrong boundaries as per Plaintiff's own case and further considering that surveyor P.W. No. 4, whose measurement is relied upon, has admitted that at the time of measurement, there was no record of division or internal cultivation available with the office in respect of survey number from which parts are claimed by rival parties ?

(b) Whether the Courts below were justified in directing an inquiry into *mesne profits* in absence of prayer and issue framed for the same?

11. Appellants are directed to file private paper book, containing pleadings and oral / documentary evidence (being part of record) within the period of 6 months from today.

(M. M. SATHAYE, J.)