

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 295 OF 2025
WITH
INTERIM APPLICATION NO. 7976 OF 2024

Ruben Feransis Pinto ... Appellant
Vs.
Pandurang Chitaman Naik ... Respondent

Adv. Hetal Patel a/w. Adv. Suraj Shetye, Adv. Hemanshu Vyas and
Adv. Priyasha Pawar for the Appellant.
Mr. Bhushan Walimbe a/w. Adv. Mayank Tripathi for the Respondent

CORAM : M. M. SATHAYE, J.

DATED : 24th JUNE, 2025

P.C.:

1. Heard learned Counsel for the Appellant.
2. The Appellant is the Original Defendant against whom the decree has been passed, the operative part of which reads as under:

- 1) Suit is decreed with costs.
- 2) It is hereby declared that the construction of house made by the defendant is in violation of construction Rules and Regulations of Village Panchayat and N.A. Order
- 3) Defendant is hereby permanently restrained to cause any kind of obstruction to the possession of the plaintiff in S.No. 137 H. No. 6.
- 4) Defendant is directed to demolish the construction made by him in violation of the Grampanchayat Rules **and** also to remove the encroachment made by him in S. No. No. 137 H. No. 6, as shown in

the map prepared by the Court Commissioner (Exh. 93) within three months from the date of this order, with his own costs.

5) Map (exh. 93) shall form part and parcel of the decree.

6) Decree be drawn up accordingly.”

3. The said decree is confirmed by the impugned Judgment and Decree dated 03/02/2022 passed by the Appellate Court.

4. The learned Counsel for the Appellant submits that Clause 4 of the impugned decree indicates that the Appellant is directed to do two distinct things. First, demolish the construction made allegedly in violation of Gram Panchayat Rules and, second, to remove alleged encroachment made by the Appellant in the property of the Respondent (Survey No. 137, H.No. 6), as shown in the map prepared by the Court Commissioner (Exh. 93). She submits that so far as first part of the Clause 4 is concerned, local Gram Panchayat was not made party and as such the direction to demolish construction in alleged violation of Gram Panchayat Rules, could not have been granted in absence of Gram Panchayat, which was a necessary party.

5. Admittedly, the Suit is contested between two private parties and local Gram Panchayat was not the party.

6. So far as the second direction to remove the encroachment in the Respondent's property as shown in the map (Exh. 93) is concerned, the

learned Counsel for the Respondent has submitted that the map, as prepared by the Court Commissioner, which was 4th attempt measurement, has not been challenged. It is further submitted that the Surveyor who was examined has not given any fatal admissions to disbelieve the map and as such, the encroachment shown in the map must be removed. He submits that it is purely a question of fact and no question of law is involved.

7. Having heard the learned Counsel for the parties and having perused the judgments of the Trial Court and Appellate Court as well as the evidence of the Surveyor, *prima facie* the directions to demolish the construction in violation of Gram Panchayat Rules, in absence of Gram Panchayat as a party, requires further consideration, about which the learned Counsel for the Respondent seeks time to make submissions.

8. Place the Appeal for further consideration on 08/07/2025.

9. Till the next date, first part of the Clause 4 of the impugned Decree about directions to demolish the construction allegedly in violation of Gram Panchayat Rules, is stayed. It is however, clarified that the second part of the Clause 4 of the impugned Judgment to remove encroachment from the property of the Respondent (Survey No. 137, H. No. 6) as shown in the map (Exh. 93) is not stayed.

10. Learned Counsel for the Appellant submits that in view the partial stay

granted by the Court, she will also take necessary instructions if the parties are willing to resolve the remaining part of the dispute.

(M. M. SATHAYE, J.)