



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO. 68 OF 2025

Tukaram Kisan Chavan through legal Heirs, 1. Parvati w/o Tukaram Chavan aged 68 years, Occ. Household 2. Pankaj@Guddu Tukaram Chavan Aged about :48 years, Occ: Business R/o. Dabi Nagar Housing Society, P.No.90 Manewada, Nagpur	}	.. Appellants (Original respondents)
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Versus

Vidyawati Manoharsingh Verma, aged about 72 years, Occ:Household through Power of Attorney Smt.Aruna w/o Sudhakar Kamble aged about 57 years, Occ:Household R/o:Plot No.84, Shrihari Nagar No.3, Nagpur	}	.. Respondent (Original Plaintiff)
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Mr. S.A.Choudhari, Advocate for appellants.
Mr. R.D.Bhuibhar, Advocate for respondent.

CORAM : ROHIT W. JOSHI, J.

DATED : DECEMBER 18, 2025

ORAL JUDGMENT

(1) **Admit.** Heard finally with the consent of the learned counsel appearing for the parties on substantial question of law framed vide order dated 10/07/2025, which read as under :-

- i. *Whether the First Appellate Court committed error in not considering the reasoned finding of the Trial Court that the correctness of the measurement needs to be proved accurately ? The First Appellate Court did not consider the fact that the Surveyor had failed to measure the adjacent properties owned by the parties to the suit correctly or accurately.*
- ii. *Whether the First Appellate Court erred in not appreciating the fact that the plaintiff is not the owner of the suit property ? The First Appellate Court failed to appreciate that there is no registered sale-deed in favour of the plaintiff and there is only an agreement of sale of the suit property executed in favour of the plaintiff ?*

As to substantial question of law No.1 :-

(2) The Second Appeal is preferred by the appellants/original defendants, as the suit filed by respondent/plaintiff for removal of encroachment came to be dismissed by the learned Trial Court. The parties are occupants of adjoining lands. Learned Trial Court has dismissed the suit on the ground that although Surveyor had measured the land of the plaintiff, joint measurement of the land of plaintiff and defendants was not carried out. Learned Trial Court has held that joint measurement of adjoining lands is necessary to determine the boundary dispute. Aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff had preferred First Appeal which came to be allowed by the learned First Appellate Court.

(3) It is not in dispute that the Surveyor has not carried out joint measurement of adjoining lands belonging to the plaintiff and the

defendants. It is well settled that the fact of encroachment and the exact extent thereof cannot be determined unless joint measurement of adjoining lands is carried out. In view thereof, substantial question of law at Sr.No.1 deserves to be answered in favour of the appellants/defendants and against the respondent/plaintiff.

As to substantial question of law No.2 :-

(4) It is not in dispute that the plaintiff has failed to produce any title document to establish her ownership over the suit property owned by her. However, in order to maintain suit for removal of encroachment, a person need not prove his/her ownership. Even possessory title is good enough to seek decree for removal of encroachment as is held by the Apex Court in the case of ***Nair Service Society Ltd. vs. Rev.Father K.C.Alexander and others 1968 SCC OnLine SC 97***. The defendant does not dispute that the plaintiff is in settled possession of his land. The defendant is not claiming any right over property of plaintiff. The learned First Appellate Court has also recorded finally that the appellant is in possession of his land on the basis of agreement of sale dated 28/07/1983.

(5) In view of above, substantial question of law at Sr.No.2 is answered in favour of the plaintiff/respondent and against the appellants/defendants.

(6) In view of the findings as recorded above, it is necessary to remand the matter to the learned First Appellate Court with a direction to appoint Surveyor from the Office of Tahsil/District Inspector of Land Records for joint measurement of the suit properties. Once the joint measurement is carried out, the parties be given an opportunity to lead additional evidence, if they so desire.

(7) The learned First Appellate Court may either record evidence itself and decide the appeal in accordance with law or direct the learned Trial Court to record evidence and return the same along with its findings on the evidence, so recorded and decide the appeal in accordance with law.

(8) Parties to appear before the learned First Appellate Court on **12/01/2026**. Parties to note that separate notice for appearance will not be issued.

(9) Learned First Appellate Court is requested to decide the appeal as expeditiously as possible and in any case on or before **30th September, 2026**, since the Civil Suit pertains to the year 2000. Parties to bear their own costs.

[ROHIT W. JOSHI, J.]

KOLHE