



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO. 118 OF 2025

APPELLANTS :

1. Gangaram s/o Madhav Waghade,
Aged about 55 years,
Occupation – Agriculturist,
R/o. Dhoki (Road), Tah. Kelapur,
District – Yavatmal.
2. Smt. Tulsabai Madhav Waghade,
(Dead)

V E R S U S

RESPONDENTS :

1. Ramlu s/o Lachamna Puppallwar,
Aged about 78 years,
Occupation – Agriculturist,
R/o. Dhoki (Road), Tah. Kelapur,
District – Yavatmal.
2. Sau. Laxmibai Ramlu Puppallwar
(Dead).

Shri H. S. Chawhan, Advocate for appellants.

CORAM: ROHIT W. JOSHI, J.

DATED : 05/05/2025.

ORAL JUDGMENT :

1. A suit for removal of encroachment filed by the respondent Nos.1 and 2 – original plaintiffs bearing Regular Civil Suit No.27/2009 came to be decreed vide Judgment and Decree dated 05/03/2012 passed by the learned Joint Civil Judge, Junior Division, Kelapur (Pandharkewada). The learned Trial Court relied upon the joint measurement map at Exh.41 to hold that the defendants have encroached on the suit property owned by the

plaintiffs. It would be pertinent to mention that in the joint measurement report at Exh.41, measurement of several lands including the lands owned by the plaintiffs and the defendants was properly carried out. The learned Trial Court did not find any fault with the said joint measurement report at Exh.41. The surveyor who had carried out the measurement was also examined the witness. The said witness stood the test of cross-examination. The defendants filed an application for appointment of Court Commissioner to carry out fresh joint measurement of the lands owned by the plaintiffs and defendants. The learned Trial Court has allowed the said application. However, the defendants failed to deposit the requisite charges as a consequence of which, joint measurement could not be conducted despite order passed by the learned Trial Court.

2. In such circumstances, relying on joint measurement report at Exh.41, the learned Trial Court has passed a decree for removal of encroachment and possession in favour of the plaintiffs.

3. The defendants assailed the said decree by filing First Appeal bearing R.C.A. No.30/2012 which came to be dismissed vide Judgment and Decree dated 17/10/2024. On reappraisal

of the evidence, the learned First Appellate Court has recorded that joint measurement of six agricultural lands including the lands owned by the plaintiffs and defendants was properly carried out by the surveyor (PW-2). The learned First Appellate Court also did not find any fault with the method of measurement and actual measurement carried out by the said surveyor. The learned First Appellate Court has also observed that the defendants wanted to prolong the matter and therefore, despite the fact that the application for joint measurement by Court Commissioner was allowed by the learned Trial Court, they did not deposit the requisite charges.

4. Shri Chawhan, learned counsel for the appellant contends that the defendants have raised a specific contention that the notice of measurement was not served on them while measurement with respect to measurement report at Exh.41 was carried out. However, perusal of judgment by the learned Trial Court demonstrates that both the defendants were present while the actual measurement was conducted.

5. Perusal of the judgments delivered by both the learned Courts would demonstrate that the learned Courts have recorded

the findings of fact on proper appreciation of material on record. The decree for removal of encroachment and delivery of possession is duly supported by joint measurement report at Exh.41. The surveyor who has carried out the measurement is examined by the plaintiffs and nothing objectionable could be extracted during his cross-examination.

6. In view of the aforesaid, the finding of fact recorded by the learned Courts cannot be termed to be perverse. Rather, they are in consonance with the evidence on record.

7. In that view of the matter, the second appeal is dismissed as not disclosing any substantial question of law.

8. Since the second appeal is dismissed, civil applications pending if any, are disposed of accordingly.

[ROHIT W. JOSHI, J.]