



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 338 OF 2025

- 1] Hanumant s/o. Asaram Anande,
Age: 34 years, Occu. Agri.,
- 2] Achyut s/o. Yashwantrao Anande
Age: 70 years, Occu. Agri.
- 3] Nilawati w/o. Achyut Anande,
Age : 67 years, Occu. Agri.
- 4] Parmeshwar s/o. Achyut Anande,
Age: 39 years, Occu. Agri.
- 5] Munja s/o. Achyut Anande,
Age: 39 years, Occu. Agri

All R/o. Masegaon, Tq. Ghansawangi,
Dist. Jalna.

.. APPELLANTS
[Orig.Defendants]

VERSUS

Balkisan s/o. Rajaram Anande,
Age: 64 years, Occu. Agri.
R/o. Masegaon, Tq. Ghansawangi,
Dist. Jalna.

.. RESPONDENT
[Orig. Plaintiff]

...

Mr.Balbhim R. Kedar, Advocate for the appellants
Mr.Arun G. Dalal, Advocate for the respondent

...

CORAM : MEHROZ K. PATHAN, J.

Reserved on : 12.02.2026

Pronounced on : 26.02.2026

ORDER :

1] Being aggrieved by the judgment and order passed by the learned District Judge-2, Ambad in Regular Civil Appeal No.02/2023, dated 01.08.2025, thereby dismissing the Appeal filed by the appellants herein and confirming the judgment and decree for removal of encroachment and recovery of possession of 54 R. and 36 R. of land, passed by the learned Civil Judge Junior Division, Ghansawangi in Regular Civil Suit No.151/2013, the appellants have approached this Court by filing the present Second Appeal.

FACTS OF THE CASE :

2] The plaintiff is owner of 02 H. 06 R. area of block No.216, situated at Mauza Masegaon, Taluka Ghansawangi, Dist. Jalna. Defendant no.1 has encroached 54 R. area from North side of block No.216 having boundaries as follows :

Towards East - Agricultural land of defendant nos.2 to 5

Towards West	- Nivrutti Balkisan
Towards South	- Agricultural land of the plaintiff &
Towards North	- Agricultural land of defendant no.1

3] According to the plaintiff, defendant nos. 2 to 5 have encroached 36 R. area from East side of block No.216 having boundaries as follows :

Towards East	- Land of defendant nos. 2 to 5
Towards West	- Agricultural land of the plaintiff
Towards South	- Agricultural land of Kole &
Towards North	- Agricultural land of defendant no.1

4] The plaintiff has submitted that his agricultural land is in block No.216 and agricultural land of defendant no.1 is in block No.215 wherein agricultural land of defendant nos. 2 to 5 is in block No.214. The plaintiff was at Nashik and therefore defendants have made encroachment over block No.216 as stated above. The plaintiff has applied for measurement in the concerned office and accordingly on 20.11.2011 measurement was taken place. Thereafter, the plaintiff came to know about

encroachment.

5] The plaintiff has asked for possession of encroached area. However, defendants refused it. The plaintiff has filed civil suit bearing No.78/2012 against the defendants for injunction. The defendants have made encroachment and threatened the plaintiff. As defendants have encroached, the plaintiff has withdrawn the suit of injunction. Defendants are cultivating the encroached area and taken profit. Hence, the suit.

6] The defendants have filed written statement at Exh. 14. they have denied the ownership of the plaintiff over 02 H. 06 R. area in block No.216. They denied encroachment. The plaintiff has filed vague suit and no measurement taken place as contended by the plaintiff. The Taluka Inspector of Land Record office did not issue notice to the defendants. The measurement map shows date as 20.12.2011. However, panchanama shows date as 09.01.2012.

7] The defendants submitted that old Survey number of block No.215 was 66/01 and its area was 07 Acre 13 R. After consolidation scheme, area of block No.215 came to be decreased by 00 H. 49 R. The defendant no.1 has possession over 07 Acre 13 R. area. The defendant no.1 has applied for correction of area before Deputy Director, Land Record office, Aurangabad and it is pending.

8] The learned trial Court after considering the claim of the plaintiff as well as that of the defendants had appointed Cadastral Surveyor and vide order dated 04.08.2017 had specifically directed Surveyor to measure Gat No.216 belonging to the plaintiff as well as Gat No.215 belonging to the defendant no.1 and Gat No.214 belonging to the defendant nos. 2 to 5. That after carrying out the measurement, the Court Commissioner / Cadastral Surveyor had submitted a measurement map, which is exhibited at Exh.48, thereby showing extent of encroachment made by the defendant no.1 [original owner of Gat No.215] as 54 R. encroached into Gat No.216

[owned by the plaintiff] and the extent of encroachment made by the defendant nos. 2 to 5 [owner of Gat No.214] to the extent of 36 R. in Gat No.216 [owned by the plaintiff]. After carefully considering depositions of PW-1 and PW-2 and also considering the documentary evidence i.e. copies of 7/12 extract of block Nos.214, 215 and 216, the measurement report Exh.47, measurement map Exh.48, block statement of Survey No.67/1 Exh.64, block statement of Gat No.215 and copy of mutation entry, the learned trial Court had decreed the suit thereby holding that the defendant no.1 was found to have encroached an area of 54 R. shown by blue colour in the map at Exh.48 in Gat No.216 [owned by plaintiff] and had directed to deliver possession of the said land to the plaintiff. The learned trial Court also found defendant nos. 2 to 5 to have encroached an area of 36 R. shown by green colour at Exh.47, with direction to deliver possession of the said encroached area to the plaintiff within a period of three months from the date of passing of the decree.

9] Being aggrieved by the judgment and decree dated 09.12.2022 passed by the Civil Judge Junior Division, Ghansawangi in RCS No.151/2013, the appellants have filed an appeal being Regular Civil Appeal No. 02/2023 before the District Judge-2, Ambad. The learned District Judge-2, Ambad, after considering the evidence led by the plaintiff and the defendants as well as documentary evidence brought on record by the plaintiff as well as defendants, was pleased to dismiss the appeal thereby upholding the judgment and decree dated 09.12.2022 passed by the Civil Judge Junior Division, Ghansawangi. Being aggrieved by the same, the appellants have approached this Court by filing the present Second Appeal.

10] After going through the judgment and decree passed by the learned trial Court, which came to be upheld by the learned Appellate Court, the following substantial questions of law arise for consideration in the present Second Appeal :

A] Whether both the learned Courts below are

justified in holding encroachment of the appellants on 54 and 36 R. land of the respondent, on the basis of the report and map of measurement prepared by the Court Commissioner, in absence of proof of service of notice of measurement and admission by the commission regarding non measurement of lands in possession of the respective shareholders in the Gat numbers and not following the proper procedure?

B] Whether both the learned Courts below are justified in deciding the suit and appeal involving issue of correction of land record in spite of the same being barred under Section 36A of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, instead of referring it to the Competent Authority under the Act and staying the suit till decision on the said issue, in view of specific bar provided under Section 36B of the said Act and non-staying the proceeding in spite of filing of the proceeding in that regard by the appellants and pendency of the same before the Competent Authority till the date?

11] To prove ownership of the plaintiff over Gat No.216 admeasuring 2 H. 06 r. situated at Mauje Masegaon, Taluka Ghansawangi, District Jalna, the plaintiff has relied upon 7/12 extract of Gat No.216. The plaintiff has examined himself as PW-1 and Cadastral Surveyor as PW-2.

PW-1 and PW-2 have deposed that the said Gat No.216 was earlier Survey No.67/1 and 67/2 [old]. The block statement of Survey No.67/1 and 67/2 was produced in evidence, which was exhibited at Exh.64 and the same had shown name of the owner as Rajaram Bhaurao i.e. father of the plaintiff. The defendants have admitted that Survey Nos.67/1 and 67/2 were old Survey Numbers and its new Block number is 216. The 7/12 extract of the new Gat No.216 was produced on record as evidence and was exhibited as Exh.38. The said 7/12 extract at Exh.38 shows the name of the plaintiff as owner of Gat No.216. The ownership column in 7/12 extract of Gat No.216 Exh.38 shows the plaintiff to be the owner of 2 H. 06 R. area. Thus, the plaintiff was found to be the owner of 2 H. 06 r. area of Gat No.216, which was earlier Survey Nos.67/1 and 67/2.

12] In so far as the allegations about encroachment by defendant no.1 to the extent of 54 R. and by defendant nos. 2 to 5 to the extent of 36 R. encroaching in Gat No.216, the learned trial Court had appointed Court

Commissioner vide order dated 04.08.2017 specifically directing the Court Commissioner / Cadastral Surveyor to measure Gat Nos.214, 215 and 216. Perusal of the evidence of the Cadastral Surveyor, who was Court appointed Commissioner and who was examined as PW-2, would show that the Cadastral Surveyor has issued notices to the plaintiff, defendants and neighbouring land owners vide notices dated 24.01.2018. The plaintiff, defendants and adjacent land owners were present on the spot on the date of measurement and as per the boundaries shown by them the area of each of the owners i.e. plaintiff, defendants and the adjacent land owners was marked by line stone. That the Cadastral Surveyor PW-2 has further stated that he has carried out measurement by means of ETS Machine and prism rod and has prepared panchanama on the spot. Panchanama dated 08.03.2018 was identified in his deposition. The defendant no.1 Hanumant Anande had also signed on the said panchanama whereas defendant nos. 2 to 5 have refused to sign on the said panchanama and accordingly said measurement map was sent to the Court,

which is exhibited as Exh.47. The cadastral Survey – PW2 has further stated in his deposition that on the basis of the measurement report Exh.47, he has prepared a measurement map, which bears his signature and the entire description of the property is properly stated in the said map, which is exhibited as Exh.48. He further stated in his deposition that extent of encroachment by the defendant no.1 in the land owned by plaintiff Gat No.216 is to the extent of 54 R. and that extent of encroachment by defendant nos. 2 to 5 in the land owned by plaintiff Gat No.216 is to the extent of 36 R. The Surveyor further stated that he has measured all three Gat numbers i.e. Gat No.214, 215 and 216 as directed by the trial Court.

13] The defendant no.1 had specifically admitted in his evidence that he has purchased the area which is mentioned on 7/12 extract of Gat No.215 at Exh.40 i.e. 2 H. 44 R. from the previous owner of block No.215 vide sale deed executed in the year 2004. The defendant no.1 had further admitted the area of block No.215 as 6 Acre 4 R.

However, the said sale deed executed in favour of the defendant no.1 by the erstwhile owner was not brought on record by the defendant no.1 to show his ownership over the 7 Acres 13 R. area of Gat No.215 for the reasons best known to him. The said act on the part of the defendant no.1 to suppress the sale deed of the year 2004 by which he has purchased the land block No.215 from the erstwhile owner Dnyanoba Anande in the year 2004, had given scope for the trial Court to draw an adverse inference against the defendant no.1. The later act on the part of the defendant no.1 to file proceedings before the District Superintendent of Land Records, Jalna for correction of 7/12 extract, which came to be rejected and the Deputy Superintendent of Land record remanding the matter back to hear afresh would not itself show that the defendant no.1 was owner of 7 Acres 13 R. area of Gat No.215 when 7/12 extract of Gat No.215 shows only 6 Acre 04 R. area belonging to the defendant no.1 as shown at Exh.40. The plea taken by the defendant no.1 that the original area of 7 Acres 13 R. came to be reduced to 6 Acres 4 R. in Gat No.215 due to the

consolidation appears to be a bogus plea taken only with an intention to defeat rights of the plaintiff and to justify encroachment made by the appellant – defendant no.1. The same was, therefore, not rightly considered by the trial Court and trial Court has found the appellants to be encroachment of area to the extent of 54 R. in Gat No.216 on the basis of the measurement report and measurement map submitted by the Cadastral Surveyor i.e. PW-2.

14] In so far as defendant nos. 2 to 5 allegations of encroachments are to the extent of 36 R. in Gat No.216 belonging to the plaintiff. The learned trial Court has held that defendant nos. 2 to 5 have failed to sign panchanama i.e. measurement report and have also not examined any witness to support their case. The learned trial Court had therefore relied upon the judgment in the case of **Vidhyadhar Vs. Manikrao & anor.** reported in **1999 (2) Civil Court Cases 91 (S.C.)** wherein it is held that party not entering into the witness box to state his own case on oath and not offering himself to be cross-examined by other side,

then a presumption would arise that the case set up by him is not correct. Thus, relying upon the aforesaid judgment and conduct of the defendant nos. 2 to 5, the learned trial Court has drawn adverse inference. The learned trial Court had also considered measurement report Exh.47 and measurement map at Exh.48 prepared by PW-2 and found that the area of 36 R. as shown in green colour in the measurement map Exh.48 to be an area encroached by the defendant nos. 2 to 5 in Gat No.216. The learned trial Court had found that the defendant no.1 admitted that defendant nos. 2 to 5 are the members of the same family and moreover defendant nos. 2 to 5 had not examined witnesses to support their case. It would be pertinent to note that PW-2-Surveyor has measured block Nos.214, 215 and 216 i.e. agricultural land of plaintiff as well as defendants. PW-2 had specifically stated that he has measured those land on the basis of block record. 7/12 extract of Exh.40 shows area of 2 H. 44 R. in the name of defendant no.1, who is owner of block No.215. The defendant nos. 2 to 5 have only denied that they have not

encroached over block No.216 as contended by the plaintiff. The defendant nos. 2 to 5 have not filed any documents to show that they did not encroach the portion of 36 R. area of Gat No.216, which was brought on record by the Cadastral Surveyor-PW2 in his deposition and also by way of measurement report and measurement map. The Cadastral Surveyor PW-2 has shown block No.216 in red colour, area of defendant no.1 Gat No.215 in blue colour and area of defendant nos. 2 to 5 in green colour in the measurement map at Exh.48. The trial Court, taking into consideration the areas owned by the defendants and plaintiffs, 7/12 extract of Gat No.214 Exh.39, Gat No.215 Exh.40 and 216 Exh.38 and taking into consideration the entire relevant documents and also evidence of the Cadastral Surveyor i.e. PW-2, measurement map and measurement report, had come to the conclusion that the defendant nos. 2 to 5, who owns Gat No.214, have encroached over Gat No.216 from eastern side to the extent of 36 R. from the block owned by them i.e. Gat No.214.

15] Thus, the findings arrived at by the trial Court on the cogent evidence led by the plaintiff and admissions in the cross examination of defendants suppression of the sale deed of the year 2004 by the defendant no.1 and non examination of any evidence by the defendant nos. 2 to 5 had rightly been considered by the trial Court to decree the suit relying upon the surveyor report and surveyor map, 7/12 extracts and relevant record of the nearby lands, by holding that defendant no.1 and defendant nos. 2 to 5 i.e. present appellants have encroached respective areas of Gat No.216, belonging to the plaintiff. The Appellate Court, also did not find any ground for interference in the well reasoned judgment and order passed by the trial Court and has, therefore, upheld the findings of the judgment and decree passed in RCS No.151/2013 vide judgment and order dated 09.12.2022.

16] I have gone through the record, depositions of the plaintiff and deposition of the Surveyor i.e. PW-2 and evidence of measurement map and report and 7/12 extract,

deposition of the defendants on affidavit and cross examination of the defendant no.1, I do not find any error committed by both the Courts below in coming to the findings arrived at by them that the defendant no.1 is found to have encroached an area of 54 R. in Gat No.216 owned by the plaintiff and defendant nos. 2 to 5 are found to have encroached an area of 36 R. in Gat No.216 owned by the plaintiff.

17] Perusal of the deposition of PW-2 Cadastral Surveyor shows that he had issued notice to all the defendants i.e. appellants herein as well as adjacent land owners and the plaintiff and had carried out measurement as per the direction issued by the trial Court vide order dated 04.08.2017. The Court Commissioner being appointed in view of the claims made by the plaintiff and defendants to carry out measurement of the said land. The measurement was carried out after filing of the suit by the plaintiff and said defence is taken by the defendants, thus, would not give a ground to the defendants that the

defendants were not served with the notice of measurement by the Surveyor as sought to be raised as ground for interference of this Court. The judgment relied upon by the learned counsel for the appellants in the case of **Raghunath Kashinath Chavan Vs. Sakharam Maroti Chavan and another** reported in **2019 (3) Mh.L.J.** does not apply in the facts of the present case. In the case of Raghunath Kashinath Chavan [supra], the land was measured on 16.03.1999 and suit was filed on 23.09.1999, which means that the suit land was measured prior to filing of the suit. It is under those fact that this Court had held that there was no attempt to get any Advocate-TILR appointed as Commissioner to measure the land after suit was filed and there was no attempt on the part of the First Appellate Court also to measure the land done even at a later stage. This Court had thus directed that the Court Commissioner shall be appointed under Order 26 Rule 9 of the CPC and get the measurement properly done. On the contrary, in the present case, as stated earlier, the trial Court had already directed the appointment of Court Commissioner for

measurement of the disputed land vide order dated 04.08.2017 passed during pendency of the Regular Civil Suit No.151/2013. Thus, in the facts of the present case, the aforesaid judgment would not apply. In so far as the other judgment relied upon by the learned counsel for the appellants in the case of **Laxman Wamanrao Nagapure Vs. Shankar Haribhau Adhau** in Second Appeal No.123 of 2013, decided on April 09, 2014. The same pertains to the different facts wherein it was held that the measurement shall be done by the Cadastral Surveyor for ascertaining encroachment on the basis of the boundary marks and admitted boundary marks in the presence of all the parties concerned. In the present case, as stated earlier, the Cadastral Surveyor i.e. PW-2 in his deposition has clearly stated that he was appointed as Court Commissioner by the trial Court during pendency of the suit and he has issued notice to all the parties concerned i.e. plaintiff, defendant no.1 and adjacent lands owners and has thereafter conducted survey of the land, prepared panchanama and submitted a report and also prepared measurement map

Exh.48. The perusal of the evidence of PW-2 Cadastral Surveyor would further show that in the presence of all defendants, plaintiff and adjacent land owners, the boundaries were first earmarked on the basis of the admitted boundary marks by putting a line stone, as per the boundaries shown by the plaintiff, defendants and adjacent land owners. The procedure as prescribed in the aforesaid judgment, was already followed by the Cadastral Surveyor. Thus, ground raised by the appellants on the basis of the aforesaid judgments, is, therefore misconceived and liable to be rejected. In view of the reasoning stated herein before purported substantial question of law no.1 as emphasized by the appellants does not arise for consideration of this Court. The findings arrived at by the learned trial Court as well as the First Appellate Court is found to be just and proper and deserves no interference on the substantial question of law (A). Therefore stands answered.

18] In so far as the other question pertaining to whether the Courts below were justified in deciding the suit

in spite of pendency of the proceedings of consolidation filed by the defendant no.1 is concerned, the trial Court as well as the First Appellate Court has considered in detail that merely because the appellants filed application for consolidation, which was rejected by the Tahsildar and was remanded back by the Superintendent of Land Record by itself would not substantiate the claim of the consolidation of the lands of the appellants. The said findings given by the trial Court is upheld by the First Appellate Court on the ground that the appellants have failed to produce on record the sale deed of the year 2004 by which they have produced block no.215 to come to the proper conclusion as to the exact area of land purchased by them from the erstwhile owner. The mere statement of the appellants, defendant no.1 that Gat No.215, actually admeasuring 7 Acres 13 R. would not by itself establish their claim when 7/12 extract of Gat No.215 shows that the said Gat No.215 was only 6 Acres 04 R., which is 2 Hector 44 R. as per 7/12 extract at Exh.40. The attempt on the part of the defendant no.1 to correct 7/12 extract was also rejected and the District

Superintendent of Land Records had merely remanded back the matter for consideration. Apart from the aforesaid fact, there is nothing brought on record by the appellants to show that there is any finding of the consolidation proceedings pending by the competent authority pertaining to the land Gat Nos. 214, 215 and 216. Rather the act of the defendant no.1 in suppressing sale deed of the year 2004 would lead to draw an adverse inference that the appellant no.1 had purchased only an area of 6 Acres 04 R. i.e. 2 Hecter 40 R. as shown in 7/12 extract at Exh.40 of Gat No.215.

19] For the reasons stated herein before, the substantial question of law no.2 also does not arise for consideration of this Court in its jurisdiction under Section 100 of the Civil Procedure Code. Since no other substantial questions of law appears to be involved in the present Second Appeal. The Second Appeal is, therefore, devoid of merits and the same is hereby dismissed with costs thereof.

20] In view of the dismissal of the Second Appeal,
Civil Application No.9839/2025 also stands disposed of.

[MEHROZ K. PATHAN]
JUDGE

DDC