



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

**SECOND APPEAL NO. 19 OF 2026
WITH
CIVIL APPLICATION NO. 645 OF 2026**

1. Ashok Keruba Manohare
2. Laxmi Mohan Manohare
3. Siddharth Mohan Manohare
4. Najuka Sagar Mhaske
5. Gayabai Sanjay Tupe
6. Yogita Bhausahab Gajhans

Versus

1. Sau. Harnabai Vishwanath Pandit
2. Annasaheb Vishwanath Pandit
3. Dadasaheb Vishwanath Pandit
4. Nanasaheb Vishwanath Pandit
5. Siddharth Vishwanath Pandit
6. Sau. Lata Goutam Jadhav
7. Gramsevak at Jikthan
8. The State of Maharashtra
9. Block Development Officer

* Advocate for the Appellants : Mr. Ujwal Subhash Patil

* Advocate for the Respondent Nos. 1 to 6 : Mr. Pramod F. Patni

CORAM : MEHROZ K. PATHAN, J.

DATE : 5th FEBRUARY 2026

ORDER :

1. The Appellants have filed the present appeal challenging the judgment dated 23.09.2025, by which the learned District

Judge-1 dismissed RCA No.55/2025 filed by the Appellants against the judgment dated 15.07.2024 passed by the Civil Judge, Senior Division, Vaijapur in RCS No.93/2017.

2. The Plaintiff-Vishwanath has filed a civil suit against Defendants. In the said suit, the Plaintiff Vishwanath sought vacant possession of the suit property and a perpetual injunction restraining Defendant Nos. 1 to 6 from obstructing or interfering with his peaceful possession of land Gat No.45, including the open space between suit properties A and B, and the open space between property B and the house of Pandit, which forms part of Gat No.45. The Plaintiff further sought to restrain Defendant Nos. 7 to 9 from sanctioning any construction over suit properties A and B. The suit was decreed by the learned trial Court, directing Respondent Nos. 1 to 6 to hand over vacant possession of suit properties A and B, namely Gram Panchayat House No. 332 (old), Gram Panchayat House No. 402 (new), and Gram Panchayat House No. 333 (old), now Gram Panchayat House No. 403 (new), to the Plaintiffs within four months from the date of the decree dated 15.07.2024. The trial Court further restrained Defendant Nos. 1 to 6 from causing any obstruction to the Plaintiffs' possession of land Gut No. 45 and from interfering with their use of the open space between suit properties A and B, as well as the open space between property B and the house of Pandit.

. The Defendant Nos. 7 to 9 were further restrained from issuing any sanction to the construction of over the suit property A and B.

3. The Appellants have filed the present appeal challenging the judgment dated 15.07.2024 passed by the learned trial Court in RCS No.93/2017. The learned District Judge, Gangapur, Chhatrapati Sambhajanagar, by judgment dated 23.09.2025 in RCA No.55/2025, dismissed the appeal filed by the Appellants. Being aggrieved by the said judgments, the Appellants have approached this Court on several substantial questions of law, amongst others. However after going through the record, the learned Counsel for the Appellants has emphasized that only two substantial questions of law arises in the appeal for consideration which are as follows :

(a) Whether both the Courts below failed to consider that, at the time of measurement by the TILR, the notices were not given to all the concerns. The Commissioner TILR in her cross-examination admitted that she had not issued the measurement notice to the Defendant Nos. 2 to 6. The measurement is not carried out as per the rules and in absence of the defendant ?

(b) Whether both the Courts below ought to have seen that the Defendant No.1 purchased the land from Sakhahari Pandit through registered sale-deed dated 23.04.1999 and from Gautam Pandit through registered sale-deed dated 03.05.1999. Since then, he is in possession of the said suit properties. He constructed house on the said land in the year 1999 and started residing there with his family. Therefore, whether the suit is not within limitation?

4. The learned Counsel for the Appellants submits that although the Court directed the land to be measured by the TILR, no notice was issued to the Defendants, and the measurement was carried out in their absence. The trial Court, however, observed that one day prior to the measurement by the Court-appointed TILR, Defendant No.1 (Appellant No.1 herein) had

moved an application seeking postponement of the measurement on the ground that he was unwell and required to visit the hospital. In view of these facts, the trial Court found that Defendant No.1, Appellant No.1 herein, had in fact been served with a notice of measurement issued by the TILR.

. Insofar as Defendant Nos. 2 to 6, who are Appellants Nos. 2 to 6 herein, have adopted the written statement of Defendant No.1, no separate notice was required to be issued to them, as their cause was being represented by Defendant No.1 (Appellant No.1 herein). The TILR, in his examination, specifically stated that no application for postponement of the measurement, as suggested by the Defendants in cross-examination, was found on record. Moreover, the TILR deposed that she did not recall any such application being moved by Defendant No.1. The suggestion given by Defendant No.1 itself indicates that he was in receipt of the notice issued by the TILR, and therefore the conclusion was drawn that the Defendant had been duly served. Furthermore, in his examination-in-chief, the TILR categorically stated that he had issued notices to all concerned and had received acknowledgments of service from nine persons connected with the measurement, including Appellant Ashok and nearby landholders. It is also stated that the son and wife of Appellant Ashok were present at the time of measurement and were asked to call Ashok. However, they pretended that Ashok would be coming, and the measurement was carried out even though Ashok did not turn up. The measurement was thus conducted in the presence of his son and wife.

5. Thus, finding by the learned trial Court regarding service of notice to the Appellant by the TILR for measurement of the land, and in view of the fact that no steps were taken by the Appellants to file any application for re-measurement or to place medical papers on record to show that he was suffering from any ailment at the time of measurement by the Court-appointed Commissioner (TILR), were proper and the Appellate Court also upheld the findings regarding service of notice upon the Appellants by the TILR, who had prepared the panchanama of the measurement (Exhibit-108) and the map prepared by the TILR was also exhibited as Exhibit-106. Since both the Courts below have applied its mind to the evidence led by Plaintiffs and Defendants and particularly the deposition of TILR, I do not find any merit in the questions of law (a). Thus the question of law (a) is answered in negative.

6. The issue of limitation was also dealt with by the trial Court in its judgment dated 15.07.2024. The Court held that although the Defendants claimed to be in possession of the suit property since 1999, the sale deeds (Exhibits-84 and 85) pertain only to open land and do not mention Gat No.45. Neither do the Gram Panchayat records contain any reference to Gat No.45. Accordingly, the question of limitation was answered in the negative. The learned Appellate Court also considered the findings on limitation and upheld the conclusions reached by the trial Court. The First Appellate Court specifically observed that Appellant No.1, Ashok, in his evidence (Exhibit-86), admitted that when he purchased Gram Panchayat property Nos. 332 and

333 (suit properties A and B), no houses existed on the said land. He further admitted that in the year 2016-17 he was sanctioned funds to construct a house under the Gharkul scheme, and thereafter he constructed the house on the said property. Thus, from his own evidence, it is clear that the Plaintiffs became aware of the construction of the houses (suit properties A and B) only after the year 2017, and accordingly, the issue of limitation was answered in the affirmative. I do not see any error in the findings arrived at by both the Courts below considering the evidence led by Plaintiffs and Defendants on the point pertaining to limitation, hence the question of law (b) is also answered in negative.

7. Thus, taking into consideration the concurrent findings of fact on the point of service of notice to the Appellants, as well as on the issue of limitation raised by them, I am not inclined to interfere with the findings, having regard to the scope of Section 100 of the Civil Procedure Code.

8. It is almost settled law that the powers under Section 100 of CPC are restricted only to entertain the substantial questions of law emanating out of the record and the judgment of the Courts below. No other substantial question of law arises in the present appeal. Hence, the appeal is devoid of merit and is dismissed with costs.

9. Civil Application is also disposed of.

[MEHROZ K. PATHAN]
JUDGE