



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

SECOND APPEAL NO.276 OF 2024

APPELLANT

Ori. Plaintiff
(on R.A.)

:- Bhaskar S/o. Prabhakar Narade, aged
45 years, Occ-Agriculturist, R/o. Kem,
Post-Dighori (Kale), Tahsil-Kamptee,
Distt. Nagpur.

..VERSUS..

RESPONDENTS

Ori. Defendants
(On R.A.)

- :-** 1 Jaideo S/o. Sampat Daulkar,
aged 55 years, Occ-Agriculturist,
- 2 Smt. Kantabai W/o. Jaideo Daulkar,
aged 50 years, Occ-Household,
- 3 Dnyaneshwar S/o. Jagoji Balbudhe
aged 50 years, Occ-Agriculturist,
- 4 Smt. Durgabai W/o. Dnyaneshwar
Balbudhe, aged 50 years,
Occ.Household,
All R/o. Kem, Post-Dighori (Kale),
Tahsil-Kamptee, Distt-Nagpur.

Mr. Syed Sufuijan, Advocate h/f. Mr. S. Raisuddin, Advocate for Appellant.
Mr. D. C. Chahande, Advocate for the Respondents.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **26.03.2026**

J U D G M E N T :

- 1) The present appeal is preferred challenging
judgment and decree dated 08.02.2018 passed by the learned

Ad-hoc District Judge-4, Nagpur in Regular Civil Appeal No.462 of 2014, whereby the learned First Appellate Court reversed the judgment and decree dated 01.10.2014 passed by the learned Joint Civil Judge Junior Division, Kamptee in Regular Civil Suit No.65 of 2009.

2) Notice in the present second appeal was issued vide order dated 12.02.2026 on the following substantial question of law:-

“Rather than dismissing the suit on the ground that the Commissioner report regarding measurement of suit property is not in accordance with the prescribed procedure, was it not necessary for the learned Court to issue a fresh commission for joint measurement of the suit land.”

3) Heard finally with consent of learned advocates for the respective parties.

4) The suit for removal of encroachment filed by the present appellant is dismissed only on the ground that the measurement carried out by Court Commissioner was not

proper and in accordance with the procedure prescribed for the same.

5) Both the learned Courts have erred in not taking into consideration the settled legal position that, in case where the Commissioner report is defective, suit for removal of encroachment should not be dismissed on that ground. Instead, a fresh commission should be issued for joint measurement of the adjoining lands owned by plaintiff and defendant. Reference in this regard can be had to the judgment of this Court in the case of *Vijay Shrawan Shende and ors. Vs. State of Maharashtra and Ors.*¹

6) In view of the settled legal position, the substantial question of law framed in the appeal is answered in favour of the appellant/plaintiff and against the respondent/defendant.

7) The Second Appeal is **allowed** in the following terms:-

I. Judgment and decree dated 08.02.2018 passed by the learned Ad-hoc District Judge-4, Nagpur in Regular Civil Appeal No.462 of 2014 and judgment and decree dated

¹ 2009(5) Bom.C.R. 306

01.10.2014 passed by the learned Joint Civil Judge, Junior Division, Kamptee in Regular Civil Suit No.65 of 2009 are quashed and set aside.

II. The matter is remitted before the learned First Appellate Court to decide the appeal afresh.

III. The learned First Appellate Court is directed to appoint Competent Officer from Government agency for joint measurement of the properties of the plaintiff and defendant and to direct the learned Trial Court to record evidence of the Court Commissioner and return its finding based on such evidence to the learned First Appellate Court as per Order 41 Rule 25.

IV. Parties will be at liberty to raise objections with respect to the findings recorded by the learned Trial Court before the learned First Appellate Court as per Order 41 Rule 26.

V. Parties are directed to appear before the learned First Appellate Court on **20.04.2026**.

VI. Parties to note that separate notice for appearance will not be issued.

8) Having regard to the fact that the suit was filed in the year 2009, the learned First Appellate Court is requested to make an endeavor to decide the appeal expeditiously and, if possible, before **30.04.2027**.

(ROHIT W. JOSHI, J.)

Ταπηγ...