



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

SECOND APPEAL NO.305/2025

Sunanda Fulchand Manapure (Dead) Through Legal heirs

Mr. Fulchand Manapure (Dead)

Mr. Hemant S/o Fulchand Manapure and others

...Versus...

Rama @ Rameshwar S/o Bajirao Ukey

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. M.I. Dhattrak, Advocate for appellants
Mr. S.A. Banik, Advocate for respondent

CORAM : ROHIT W. JOSHI, J.

DATE : 11/02/2026

1. The present appeal challenges the judgment and decree dated 26/02/2024, passed by the District Judge-10, Nagpur in Regular Civil Appeal No.369/2016, reversing the judgment and decree dated 29/02/2016, passed by the learned 3rd Joint Civil Judge, Junior Division, Nagpur in Regular Civil Suit No.889/2005.

2. Substantial question of law in the present appeal was framed vide order dated 17/10/2025. With the consent of the parties, substantial question of law framed vide order dated 17/10/2025 is re-framed as under :-

Whether the learned Court has erred in law in placing reliance on the map prepared by the Court Commissioner, which does not show the actual boundaries of respective places as per the records and merely shows possession of the parties at the spot ?

3. Second Appeal arises out of suit for removal of encroachment. The suit was initially dismissed. In the first appeal, a Court Commissioner was appointed, who has submitted measurement map and report, based on which, the first appeal came to be allowed and accordingly, decree for possession came to be passed in favour of the plaintiff, who is respondent in the present appeal.

4. Perusal of the Court Commissioner's Report will indicate that although possession of plaintiff and defendants over their respective plots as it exists on the spot is demarcated, the map does not demarcate the actual areas of their respective plots as per records. The decree passed on the basis of such a map, which does not clearly show the extent and location of alleged encroachment, will be of no avail to other parties.

5. In view of the aforesaid, Second Appeal is allowed by answering substantial question of law in favour of appellants/defendants and against the respondent/plaintiff. Second Appeal is, therefore, allowed in the following terms :-

(i) Judgment and decree dated 26/02/2024, passed by the learned District Judge – 10 Nagpur in Regular Civil Appeal No.369/2016 is quashed and set aside. The appeal is remitted to the learned first Appellate Court for deciding the same afresh.

(ii) The learned first Appellate Court shall appoint a Court Commissioner for re-measurement of the plots of the plaintiff and defendants.

(iii) The learned first Appellate Court shall direct the Court Commissioner to specifically demarcate the boundaries of the plots of plaintiff and defendants, as per location at the spot, as also the boundaries of their respective plots, as per the records.

(iv) Court Commissioner be directed to demarcate the encroachment, if any, and also to mention the dimensions thereof accurately in the measurement map.

(v) Parties shall appear before the learned District Judge – 10, Nagpur on 16/03/2026.

(vi) Parties to note that separate notice for appearance will not be issued.

(vii) Having regard to the fact that the parties are litigating since 2005, learned first Appellate Court is requested to decide the suit as expeditiously as possible and preferably before 31/03/2027.

(viii) No order as to costs.

(ROHIT W. JOSHI, J.)