



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

SECOND APPEAL NO. 274 OF 2022
WITH
CIVIL APPLICATION NO. 1287 OF 2025
WITH
CIVIL APPLICATION NO. 12 OF 2026
IN
SECOND APPEAL NO. 274 OF 2022
RAGHOBABI S/O GANPATRAO PARATE
Vs.
RAGHUNATH S/O MAHADEORAO KHANDAR

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

Court's or Judge's orders.

Ms. Vijaya P. Thakre, Advocate for the Appellant.
Mr. Nitin L. Jaiswal, Advocate for the Respondent.

CORAM : ROHIT W. JOSHI, J.
DATE : 17th JANUARY, 2026.

1. The following substantial question of law was framed in the present appeal on 2nd August 2022:

“Whether the approach of the learned First Appellate Court in dismissing the appeal without considering the application under order 41 rule 27 of civil procedure code filed by the appellant/plaintiff for proper adjudication of the matter is sustainable in the eyes of law?”

2. The dispute between the parties pertains to removal of encroachment. The appellant/original plaintiff had placed on record a measurement map at Exhibit 27. However, the surveyor was not examined by the witness as a consequence of

which the learned trial Court did not place reliance on the map and dismissed the suit. In the appeal, the appellant filed an application seeking permission to lead additional evidence in order to examine the surveyor who prepared the measurement map at Exhibit 27. The said application remained undecided while the appeal was heard finally and dismissed.

3. Learned advocate for the appellant contends that a decree passed by the learned first appellate Court without deciding the application under Order 41 Rule 27 of Civil Procedure Code cannot be sustained.

4. Learned advocate for the respondent/original defendant contends that no arguments were advanced on the said application and therefore, it must be deemed that the application was not pressed.

5. A boundary dispute cannot be decided in the absence of joint measurement of property. It is also well settled that measurement report or map cannot be read in evidence unless the surveyor is examined. Having regard to the aforesaid in the considered opinion of this Court, the application for permission to lead additional evidence ought to have been considered by the learned first appellate Court on its merits.

6. In view of the above, substantial question of law framed vide order dated 2nd August 2022 is answered in favour of the appellant/plaintiff. The Second Appeal is partly allowed in the following terms:

(i) The judgment dated 28th February 2022 passed by the District and Sessions Judge, Nagpur in Regular Civil Appeal No. 376 of 2017 is quashed and set aside.

(ii) Regular Civil Appeal No. 376 of 2017 is remitted back to the first appellate Court for deciding afresh.

(iii) Learned appellate Court shall also decide the application for furnishing additional evidence in accordance with law.

(iv) Parties shall appear before the learned first appellate Court on 16th February 2026.

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

7. Having regard to the delay, the appellant to pay cost of Rs.5,000/- to the respondent.

(ROHIT W. JOSHI, J.)