


Judgment, RCA No. 20/2017

MHAH070001502017 	Presented on	:	04/03/2017
	Registered on	:	06/03/2017
	Decided on	:	13/04/2026
	Duration	:	Y. M. D.

IN THE COURT OF DISTRICT JUDGE-2, SANGAMNER,
AT-SANGAMNER, DIST. AHMEDNAGAR.
(Presided over by : Dhananjay A. Deshpande)

Regular Civil Appeal No. 20/2017

Exh.No.31.

1. **Kashinath Namdeo Bharitkar (Dead),**
Legal-heirs
 - 1A. **Sarubai Narayan Gaikwad,**
Age- 62 Years, Occu.- Agricultural,
R/o. Shekaiwadi,
Tal. Akole, Dist. Ahmednagar.
 - 1B. **Indubai Dnyaneshwar Balsaraf,**
Age- 55 Years, Occu.- Agricultural,
R/o. Shekaiwadi,
Tal. Akole, Dist. Ahmednagar.
 - 1C. **Sindhubai Ganpat @ Bhausahab Bankar,**
Age- 52 Years, Occu.- Agricultural,
R/o. Malizap,
Tal. Akole, Dist. Ahmednagar.
 - 1D. **Sangita Rajaram Waje,**
Age- 40 Years, Occu.- Agricultural,
R/o. Wavi, Tal. Sinnar, Dist. Nashik.

2. **Meerabai D/o. Kashinath Bharitkar,**

Age- 60 Years, Occu.- Agricultural,

3. **Gorakshnath Kashinath Bharitkar,**

Age- 58 Years, Occu.- Agricultural,

Appellants 2 & 3 r/o. Khanapur,

Tal. Akole, Dist. Ahmednagar.

...(Appellants)

...(Original Defendants No.1 to 3)

Versus

1. **Sandeep Dattatraya Chothave,**

Age- 40 Years, Occu.- Agricultural,-

(Original Plaintiff No.1)

2. **Ravindra Dattatray Chothave,**

Age- 45 Years, Occu.- Agricultural,- (Original Plaintiff No.2)

3. **Taluka Inspector of Land Record,**

Akole, Tal. Akole, Dist.Ahmednagar-

(Original Defendant No.4)

4. **District Superintendent of Land Records,**

Ahmednagar

(Original Defendant No.5)

5. **Tahasildar Akole,**

Tal. Akole, Dist. Ahmednagar.

(Original Defendant No.6)

6. **State of Maharashtra,**

Through Collector Ahmednagar District,

Collector Office, Ahmednagar,

Dist.Ahmednagar

(Original Defendant No.7)

...(Respondents)

Appearance :-

=====
Adv. Shri. P.R. Malpani, for the appellants.

Adv. Shri. K.D. Dhumal, for the respondent no.1 and 2.

Adv. S. A. Wakchoure, for the respondent no. 3 to 6

=====

: JUDGMENT :

(Delivered on 13/04/2026)

01. The defendant nos. 1 to 3, being aggrieved with the mandatory injunction of correction of revenue record, fixation of boundaries of suit properties and directions for removal of encroachment, have preferred this appeal.

Plaintiffs' case :

02. (a) The plaintiffs alleged that S.No. 22 has subdivisions 22/1 and 22/2. Suit properties are part of S.No.22/1, wherein suit property described in plaint para 1A is purchased by plaintiffs, while the one described in para 1B is owned by defendant no. 1 to 3. As per the land records, original S.No. 22/1 admeasured 3H 81R, inclusive of 0H 30R of potkharaba till 1978-79.

(b) In 1978, defendant no. 1, purchased 1H 75.5R +pot kharaba 0H 15 R from the southern side from and out of S.No. 22/1, resulting in two equal sub-divisions of S.No. 22/1. The area purchased by defendant no. 1 on the southern side was numbered as S.No. 22/1B, while northern side was numbered as S.No. 22/1A. Plaintiffs purchased S.No. 22/1A.

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S.No. 22/1B is at lower elevation than S.No. 22/1A and there was an East-West running bandh between those properties.

(c) As the defendant nos 1 to 3, in the month of March, 2006 started destroying the bandh and also started constructing houses by encroaching upon plaintiffs property, they were constrained to file RCS No. 40/2006 for the relief of perpetual injunction. TILR, was appointed as a Court Commissioner in the said suit, whose report disclosed that the plaintiff possesses 1 H 57 R, while defendant no. 1 to 3, possessed 2H 22 R. But as there was no sub-division, the TILR could not measure the individual sub-divisions and fix boundaries.

(d) Though S.No. 22/1A and 22/1B each admeasure 1H 90.5R, but on account of clerical error of officials of defendant nos. 6 and 7, area of suit property 1B i.e. S.No. 22/1B was altered. The defendant no. 1 to 3, by taking disadvantage thereof, have encroached upon S.No. 22/1A.

(e) The defendant no. 1 to 3, while mutating the area allotted to their share in partition, by mutation entry no. 1256 and 1378 have caused the potkharaba to be shown as 55R instead of 15R. The defendants have thereby committed encroachment of 40R.

(f) As it was not possible to seek the relief of correction in revenue record, the plaintiff sought permission to withdraw the RCS No. 40/2006, with liberty to file fresh suit on the same cause of action. Though the plaintiffs sought correction of this anomaly, the revenue officers did not act, despite receipt of notice. Hence the suit for mandatory injunction for correction of revenue record, fixation of boundaries of sub-division and possession of 40R encroached portion.

Case of defendant Nos. 1 to 3 :

03. (a) The defendants averred that the suit was barred by the provisions of Order II, Rule 2 of the Code of Civil Procedure, 1908 (CPC). House property, bandh and trees abutting the bandh were in existence since 1970, when the defendants purchased the property. The description of suit property and its four boundaries was incorrect. The defendant no. 1 to 3's area is 1H 75.5 R plus pot kharaba 0H 55. The plaintiffs have wrongly mentioned the potkaraba to be 0H 15R. S.No. 22/1, originally belonged to Manohar Somani and Gangadhar Somani. Defendant No.1 and his brother Valiba were desirous of purchasing it, but were short of funds. Hence they agreed to purchase it in the name of Mr. Bhujbal-father -in-law of Valiba. As per their *inter se* arrangement, Mr. Bhujbal purchased S.No.22/1. Defendant no.1 and Valiba erected a east- west running bandh between S.No. 22/1 and southern portion was taken by defendant no.1, whereas northern portion was taken by Valiba's wife Parvatabai. In 1966 itself Defendant no.1, planted mango trees on the bandh. In 1970 Mr. Bhujbal executed a sale deed of S.No. 22/1 in favour of Valiba and defendant no.1. Mutation entry was effected as per the actual possession of the land and the interse division was as per the quality of the land. Hence the mutation in the 7/12 extract depicting 1H 75.5 R + 0H 55 R potkharaba in favour of defendant no.1, was correct.

(b) Parvatabai sold northern portion of S.No. 22/1, which was in her possession to Subhash Sitaram Gite, who in turn sold it to one Mr. Lahamge, who transferred that portion to the plaintiffs. Since 1966 none of the predecessors in title of the plaintiffs objected to defendant no.1 to

3's occupation and possession over 2H 30.5R land. Defendants have constructed house property in the year 1970 itself.

(c) Mutual partition was effected amongst defendant no. 1 to 3, as reflected in mutation entry no. 1265 and 1378 and the defendant no. 1 to 3 accordingly own and possess 2H 30.5R of 22/1 i.e. suit property 1-B and they further denied having encroached upon plaintiffs' property as alleged.

(d) Alternatively, they pleaded that as they have perfected their title by adverse possession, the suit be dismissed.

04. Defendant nos. 4 to 7, though duly served failed to file their written statement and the plaint averments qua said defendants remained untraversed.

Plaintiffs' evidence :

05. Plaintiff No.1 examined himself at Exh. 29 and led oral evidence of Cadastral Surveyor / Court Commissioner appointed in RCS No. 40 of 2006, at Exh. 45. The Plaintiffs also relied on following documentary evidence:

- (a) certified copies of 7/12 extracts (Exh. 33 to 35, 75, 77, 78);
- (b) Assessment Extract Form No. 8 (Exh. 76);
- (c) Certified copies of ME No. 1265 (Exh.36), 1378 (Exh. 37), 722 (Exh. 75);
- (d) Office copy of notice dated 18/10/2020 (Exh. 38);
- (e) 'A' Sheet of measurement map prepared by the Court Commissioner (Exh. 48)

- (f) Certified copy of Exh.1 in RCS No. 40/2006 (Exh. 72)
- (g) Certified copy of suit withdrawal application in RCS No. 40/2006 (Exh. 73)

Defendant No. 1 to 3's evidence :

06. Defendant no. 1 examined himself at Exh. 55 and led oral evidence of Police Patil Shivaji Rambhau Balsaraf, at Exh. 61 and rested their case by filing pursis Exh. 62.

They also led following documentary evidence:

- (a) Certified copy of 7/12 extracts (Exh. 41 and 79);
- (b) Certified copy of plaint in RCS No. 40/2006 (Exh. 42)
- (c) Assessment Extract Form No. 8 (Exh. 80,81 and 83)
- (d) Grampanchayat bills Exh, 82.

07. The learned trial Court did not find favour with the defendant no. 1 to 3's objections as to adverse possession or Order II Rule 2 of the CPC and held that an area admeasuring 0H 40R was shown excess in favour of the defendant no.1 to 3 in the record of rights. It accordingly directed the defendant no. 6 and 7 to correct the village record by lessening 0H 40R potkharaba from old S.No. 22/1B. It also accepted the extent of 31.5R encroachment over S.no. 22/1A, as shown in measurement map Exh. 48 and directed the the defendant no. 1 to 3 to remove the encroachment and handover vacant and peaceful possession to the plaintiffs within 2 months from the date of decree. The trial Court further directed the defendant no. 4 and 5 to prepare Falni (sub-division) record in respect of the suit properties and fix their boundaries by accepting necessary fees from the parties as per rules. Hence this appeal.

08. I have heard Adv. P. R. Malpani for the defendant no. 1 to 3, Adv. K. D. Dhumal for the plaintiff. None appeared for defendant no. 4 to 7, despite sufficient opportunities. Perused the record, in the light of their submissions. Following points arise for my determination and I have answered them for the reasons that follow:

POINTS	FINDINGS
1. Whether the suit is barred by the provisions of Order 2 Rule 2 of the CPC?	Negative.
2. Did plaintiffs prove that the revenue record concerning the suit properties is erroneous?	Affirmative.
3. Did plaintiffs prove that the defendant no. 1 to 3, committed encroachment over their property?	Negative.
4. Whether the plaintiffs are entitled for the relief of mandatory injunction of correction of the revenue record?	Affirmative.
5. Whether the plaintiffs are entitled for the relief of removal of encroachment and possession of the encroached property, if any?	Does not survive.
6. Whether the defendant no. 1 to 3 have perfected their title by adverse possession?	Negative.
7. Whether the impugned judgment and order calls for any interference?	Partly affirmative.
8. What order?	...As per final order.

REASONS

Point No.1 (Order II Rule 2)

09. Adv. Mr. Malpani for the appellants submitted that the plaintiffs had earlier filed RCS no. 40/2006, simplicitor for the relief of injunction and did not claim the reliefs, which have been claimed in the subsequent suit. As RCS No. 40/2006 was withdrawn, the subsequent

suit is barred by the provisions of Order II Rule 2 and Order XXIII of the CPC and was liable to be dismissed on this sole count. For that he relied on :

(a) *Virgo Industries (Eng.) Private Limited Vs. Venturetech Solutions Private Limited [(2013) 1 SCC 625]*

(b) *State Bank of India Vs. Gracure Pharmaceuticals Ltd.[2014 (4) Mhlj 20]*

(c) *Sayyed Noor s/o. Sayyed Burhan Vs. Sayyed Minya s/o. Sayyed Burhan and others [2015 (6) MhLJ 910]*

10. In reply Adv. Mr. Dhumal submitted that, 'cause of action' is a bundle of facts. It was during the pendency of RCS 40/2006 a Court Commissioner was appointed, who measured the suit land and disclosed encroachment. However in the absence of *Falni* record, area of each of the parts of the suit property could not be ascertained and fixed. Therefore the suit was withdrawn with liberty to file fresh suit on the same cause of action. The Plaintiffs have later issued notice, arrayed Revenue officers as party and sought appropriate reliefs for correction of revenue record, fixation of boundaries and removal of encroachment on the basis of the liberty granted by the trial Court in RCS No. 40/2006. Thus the trial Court rightly held the suit to be maintainable.

11. As can be seen from the cited authorities, the object of Order II Rule 2 is to avoid multiplicity of litigation and not to vex the parties over and again in a litigative process. It has a larger public purpose to achieve by not burdening the Court with repeated suits. Bar under Order

XXIII Rule 1, cannot be circumvented by mere addition of parties. In the absence of leave, omitted relief cannot be sought in the subsequent suit.

12. The plaintiffs had admittedly filed RCS 40/2006 for the relief of injunction, wherein they had alleged overt act of destruction of bandh by the defendant no. 1 to 3. A Surveyor was appointed as a Court Commissioner, whose report disclosed certain extent of encroachment allegedly at the instance of the defendant no.1 to 3. At the same time, in the absence of record of sub-division and its demarcated boundaries, the Court Commissioner, expressed his inability to fix boundaries of the sub-divisions of S,No. 22/1 and exactly point out the demarcation. It was in these circumstances that an application Exh. 52 was filed in RCS No. 40/2006 seeking leave to withdraw the suit with liberty to file it afresh on the basis of same cause of action (see Exh. 73 in subsequent suit). The then learned trial Court seized of the matter, considered the application on its merits and granted the leave as sought for. It was thereafter that the present suit with substantial relief of correction of record, fixing of boundaries, removal encroachment etc; has been filed, wherein the Revenue authorities have been added as parties. The suit having been based partly on the initial cause of action and the circumstances following the disclosures in the Court Commissioner's report, the same would have been hit by Order XXIII Rule 1, read with Order II Rule 2 of the CPC, but for the leave contemplated in the later provision. But the same having been admittedly secured (Exh. 73), the subsequent suit cannot be said to be barred by the provisions of Order II Rule 2, and accordingly, I answer point no. 1, in the negative.

Point No.2 and 4 (error in area)

13. Adv. Mr. Malpani argued that the plaintiffs have not clearly stated as to how they acquired the title and the position of the suit property that prevailed during the era of predecessor in title of the plaintiffs. He took me through the pleadings in the written statement of defendant no. 1 to 3 to demonstrate that Valiba (defendant no.1's brother) and the defendant no.1 owned S. No. 22/1 since 1970, which they purchased from Mr. Bhujbal, who was none other than father in law of Valiba. They had as per their mutual understanding placed an East-West bandh unequally dividing the property as per its quality of which northern portion was allotted to the share of Valiba's wife and southern portion admeasuring 1H 75.5 R plus 0H 55 R potkharaba to the share of defendant no.1. That position continued even after transfer of northern portion in series upto the plaintiffs. That being so, there was no question of there being any error in record of rights and no correction therein was needed.

14. As against this Adv. Mr. Dhumal submitted that no doubt the northern part of S.No.22/1 i.e. 22/1A was purchased by plaintiffs and the southern portion belongs to the defendant no.1 to 3, but both the portions admeasured 1H 75.5 R plus potkharaba 0H 15 R. Defendant no. 1, while effecting partition amongst defendant no. 1 to 3, could not have partitioned any area beyond that. But actually it has so happened. Plaintiffs had issued a statutory notice to the revenue authorities responsible for correcting the error but as they failed, the plaintiffs had to seek mandatory injunction which the trial Court rightly granted.

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15. Neither of the parties have filed their respective title documents. They rely on their pleadings, admissions in the cross examination and the record of rights, copies of part of which was filed in the trial Court. Old S. No. 22/1 is the property which is the genesis of the dispute. Defendant no. 1 to 3 have come out with a case of an arrangement between defendant no.1, his brother Valiba and Valiba's father in law Mr. Bhujbal, accordingly to which Mr. Bhujbal purchased S. No. 22/1 in the year 1966 and later on transferred it to defendant no.1 and Valiba in the year 1970. Northern portion being possessed by Valiba's wife Parvatabai and she transferring it to Mr. Gite, Mr. Gite transferring it to Mr. Lahamge and thereafter to the plaintiffs. The southern portion was allotted to the share of defendant no.1. This part of the DW1's evidence has remained unchallenged. It is on this backdrop that the revenue record assumed significance as neither of the parties have tendered their title documents in the evidence, but dispute the area possessed by the other.

16. Defendant no.1, has come up with a case that the division of S. No.22/1 amongst him and Valiba was unequal and as per the quality of land. He was granted more land i.e 1H 75.5 R plus 0 H 55 R pot kharaba and not 1 H 75.5 R and 0H 15R potkharaba, as alleged by the plaintiffs. Thus the dispute lies as to the an area of 0H 40 R of potkharaba.

17. M E No. 722 (Exh. 74) states that the defendant no.1, filed an application dated 10/11/1978 stating that he has purchased southern portion of the land (S.No.22/1A and 22/1B) for Rs. 3,000/- from Tukaram Shivram Bhujbal on 24/03/1970 and is cultivating the same and that accordingly ME No. 619 was effected showing joint possession.

However he requested that for bank encumbrance purposes, his share be shown separately. His share was accordingly shown separately as follows:

Survey No.	Area	Assessment	Name
22/1A	1H 75.5 R +0H 15 R (Kh)	Rs. 5.03	Sitaram Narayan Gite
22/1B	<u>1H 75.5 R</u> <u>+0H 15 R (Kh)</u> <u>(emphasis</u> <u>supplied)</u>	Rs. 5.03	Kashinath Namdeo Bharitkar

18. M E No. 722, militates against the claim of defendant no.1, that the distribution of S.No. 22/1 was unequal and he was granted more area, more particularly the potkharaba was 0H 55R. In fact it shows that the division was equal and the potkharaba too was divided equally. This is also reflected from the 7/12 extracts of the year 1978-79 and 1979-80 of S.No. 22/1A and 22/1B (Exh. 75, 77, 78). Thus even as per the revenue record on which the defendant no.1 places his reliance, shows that the defendant no. 1 owned and possessed 1H 75.5R+ 0H 15R i.e. 1H 90.5 R land in S.No. 22/1B.

19. Defendant no. 2 and 3 are the progeny of defendant no.1 and they claim interest in S.No. 22/1B on the basis of partition that was effected by defendant no.1. M E No. 1265 dated 07/09/2000 is the entry about partition effected by defendant no.1, whereby he allotted 0H 88 R plus 0H 27 R potkharaba in favour of his son Gorakshnath (defendant no.3). As stated earlier, when defendant no.1 -Kashinath did not possess potkharaba area more than 0H 15 R, he could not have partitioned and allotted any area beyond that to defendant no.3.

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20. After effecting the partition in the year 2000, defendant no.1 held 0H 87.5R land, while defendant no. 3 held 0H 88R + 0H 15R potkharaba. Defendant no.1 again partitioned 0H 40 R land in favour of his daughter Meerabai (defendant no.2) as can be seen from ME No. 1378 (Exh.37) dated 24/11/2003. Thus defendant no.1's holding ought to have been 0H 47.5R (0H87.5 – 0H 40R). However ME No. 1378 reflects it to be excess by 0H 28R of potkharaba. Thus defendant no.1 seems to have partitioned excess pot kharaba area of 0H 40R (0H 12R+0H 28R) amongst defendant no. 1 to 3. The Tehsildar, ought to have suo moto taken steps to correct this apparent error, which he has failed even after being made aware by statutory notice (Exh. 38). The error being apparent and the competent authorities having failed to perform their statutory duty, mandatory injunction can be issued to them to perform their lawful duty. Accordingly point no. 2 and 4, are answered in the affirmative.

Point no. 3 and 5 (encroachment and its removal)

21. Adv. Mr. Malpani by referring to the Court Commissioner's report and the measurement map as well as the cross examination of PW1, submitted that in absence of any clear demarcation of encroached area, the learned trial Court erred in holding that there was encroachment to the the extent of 31.5R.

22. Adv. Mr. Dhumal, submitted that the defendant no. 1 to 3 having usurped excess potkharaba area of 0H 40R amongst themselves over and above their entitlement, plaintiffs have prima facie proved the encroachment. Yet the trial Court conservatively held the encroachment

only to the extent disclosed in the measurement map and no interference was called for in the said finding.

23. Admittedly there has been no measurement record of the sub divisions of old S.No.22/1 and this is reflected from the surveyor's cross examination. In its absence, the Surveyor could not ascertain the exact boundaries of holdings of each of the parties and ascertain the consequential encroachment, if any. The encroachment shown by it is based on the tentative assessment, which cannot be made basis of arriving at a positive finding of encroachment. I do find substance in the contentions of the defendant no. 1 to 3, that encroachment has not been proved and accordingly answer point no. 3 in the negative. In the absence of definitive proof of encroachment, the issue of its removal is redundant and hence point no. 5 does not survive for consideration.

Point no.6 (adverse possession)

24. On the aspect of adverse possession, parties have relied on following authorities to support their respective stands:

- (a) *Rajib Lochan Patel Vs. Sapneshwar Pandey and others, (AIR 1995 Orissa 70)*
- (b) *Bombay High Court Second Appeal No. 326 of 1994, Mr. Anajabai Rajaram Gore Vs. Manjulabai Baban Gaikwad,*
- (c) *Kshitish Chandra Bose Vs. Commissioner of Ranchi, (AIR 1981 SC 707)*
- (d) *Parsinni (Dead) By Lrs. And Others Vs. Sukhi and others [(1993) 4 SCC 375]*

- (e) *Bondar Singh and others Vs. Nihal Singh and others, (AIR 2003 SC 1905)*
- (f) *P.T. Munichikkanna Reddy and others Vs. Revamma and others, (AIR 2007 SC 1753)*
- (g) *Narendra Voikunt Raikar Vs. Amaral Pereira, [AIR 2007 (NOC) 1085(BOM.)]*

25. Following principals emerge from the aforesaid pronouncements:

(a) A person who claims adverse possession should show :

(1) on what date he came into possession, (2) what was the nature of his possession, (3) whether the *factum* of possession was known to the other party, (4) how long his possession has continued, (5) his possession was open and undisturbed, and he must plead and prove that the was in open and uninterrupted possession for more that 12 years to the original owner's knowledge.

(b) A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

(c) Under Article 65 of the Limitation Act, 1963, the suit can be filed based on the title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant. Otherwise, the right to recover possession based on the title is absolute, irrespective of

limitation, in the absence of adverse possession by the defendant for 12 years.

26. If the alternative plea of adverse possession put forth by the defendant no. 1 to 3, is examined on the touchstone of the aforesaid principles, it is seen that it falls short not only of the pleadings but also the proof thereof. Defendant No. 2 and 3 claim through defendant no.1. ME No. 722 (Exh.74), which was effected in the year 1978 at the instance of defendant no.1, clearly records the area owned and possessed by defendant no.1 to be 1H 75.5R plus 0H 15R potkharaba. This position continued till the year 2000, when the defendant no. 1 effected partition amongst himself and defendant no.3 and ME No. 1265 (Exh.36) was effected. Even this partition was based on supposed understanding of subsisting title over and above 0H 15 R of the potkharaba. Even the subsequent partition between defendant no.1 and 2 in the year 2003 is not based on denial of title or some hostile animus. Even if it is assumed to be so, then it ought to have been specifically denying the title of the plaintiffs. But the revenue record, which is the only evidence led, does not disclose any such attempt much less the hostile animus. In view of the same, I answer point no. 6, in the negative.

Point No.7 (Interference)

27. I have carefully reassessed the pleadings and evidence on record and reached aforesaid conclusions, which to some extent ratify the trial Court's findings. In the absence of any definitive record of subdivision measurement and when the expert i.e. the Court Commissioner, himself expressed his inability to ascertain the boundaries of the sub-

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division and consequential encroachment, the so called encroachment as disclosed in the measurement map was of no use and the trial Court ought not to have passed a decree on such evidence which lacked foundation. Furthermore correction of revenue record is within the domain of the revenue authorities and the mandatory injunction ought to be limited to perform their statutory duty of keeping the revenue record updated and correct. The mandatory direction in this case to the Tehsildar ought to be correct the revenue record of the suit properties in accordance with law and in the light of ME No. 722. To this extent, interference being necessary, I answer point no. 7, partly in the affirmative.

28. Before parting away, it is necessary to observe that, this litigation could have been avoided, had the State machinery i.e. defendant no. 4 to 7, performed their official duties in the manner it was expected. The pre-suit statutory notice to the Government Officers is not an empty formality but a reminder to address the grievances, which if left unresolved would snowball into litigation. Though such notice was given in this case, the defendant no. 4 to 7, did nothing to address the grievances. Not only that they did not even bother to file their written statement in the trial Court, despite being duly served and represented. Even in the appellate proceedings, the learned Government Pleader for the reasons best known, choose not to appear. Government is the biggest litigator and responsible for litigation of the present type. Timely action would have obviated this prolong litigation.

29. Recently the Government of Maharashtra has taken decision to measure sub-divisions of properties and prepare authenticated maps

thereof. The Government has already issued Resolution to that effect and has also decentralized control for effective implementation of his decision. The Government Authorities who are party to the proceeding are also members of the Taluka level committee formed for said purpose by the Government. I hope and trust that this would correct the anomaly of absence of authenticated map/ boundaries of sub-divisions, experienced in the present matter. It is only upon receipt of such data that proper measurement to assess encroachment would be possible in the peculiar facts and circumstances of the present case. In order to avoid lapses as experienced in this litigation, copy of judgment be sent to the learned District Collector, Ahilyanagar for compliance and necessary corrective action. With these observations I proceed to pass following order ;

ORDER

- A. Regular Civil Appeal No. 20/2017, preferred against judgment and decree rendered by then Civil Judge, Senior Division, Sangamner, in R.C.S. No. 567/2011 is partly allowed with proportionate cost and the impugned judgment and order is modified as under:
- 1 R.C.S.No. 567/2011 is partly decreed with proportionate costs.
 2. Original Defendant No.4 to 7 shall take necessary steps in accordance with law for effecting correction in the revenue record concerning old Survey No.22/1B of village Khanapur, Tal.Akole in the light of Mutation Entry No.722.

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3. Original Defendant No.4 to 7 shall fix the boundaries and prepared measurement map of the sub-divisions of old Survey No.22/1 of village Khanapur, Tal. Akole, Dist. Ahilyanagar within 6 months from the date of this judgment.
- B. Copy of judgment be sent to learned District Collector, Ahilyanagar for compliance and necessary corrective action.
- C. Decree be drawn and the trial Court be informed accordingly.

Sangamner.
Date : 13/04/2026.

(Dhananjay A. Deshpande)
District Judge-2 & Additional
Sessions Judge, Sangamner.
(MH02722)