

MHAH130001222024



Presented on : 20.02.2024  
Registered on : 20.02.2024  
Decided on : 09.03.2026  
Duration : Y. M. D.  
02 00 19

**IN THE COURT OF DISTRICT JUDGE-1, AT : NEWASA,  
DIST. AHMEDNAGAR**

(Presided over by : Haribhau R. Waghmare)

**R. C. A. No. 04/2024**

**Exh. No.40**

Patanjali Ayurved Ltd.,  
Through Its Authorised Representative,  
Shri. Nitin Janardhan Mohokar,  
Age : 46 Yrs., Occ. : Service,  
S/o Janardhan Shankarrao Mohokar,  
R/o. Patanjali Foods Limited, Khadka,  
Tal. Newasa, Dist. Ahmednagar.

**...APPELLANT**  
(Ori. Defendant)

**VERSUS**

1. Shri. Santosh Nandu Bhangе,  
Age : 34 Yrs., Occ. : Agril,
2. Shri. Amol Laxman Bhangе,  
Age : 29 Yrs., Occ. : Agril,
3. Shri. Vishnu Laxman Bhangе,  
Age : 27 Yrs., Occ. : Agril,  
All R/o. Khadaka, Tal. Newasa,  
Dist. Ahmednagar.

**...RESPONDENTS**  
(Ori. Plaintiffs)

**APPEAL : U/SEC. 96 OF THE CIVIL PROCEDURE CODE**

**ADVOCATES :**

For the Appellant : Shri. G. M. Sharma  
For Respondents : Shri. C. T. Kadam

**:: J U D G M E N T ::**  
(Delivered on this 09<sup>th</sup> day of March, 2026)

Appellant / defendant in R.C.S. No.412/2018 has assailed legality and correctness of decree for delivery of possession of encroached area passed against it by the Civil Judge (Sr. Dn.), Newasa.

2] Respondents were plaintiffs before the trial Court.

3] For the sake of convenience parties are referred to as they stood before the trial Court.

4] Land Gat No.4/1 is owned by the plaintiff Nos.2 and 3. Land Gat No.4/2 is owned by the plaintiff No.1. Defendant is owner of land Gat Nos.5/1, 5/2 and 5/3. All the lands are situated at village Khadake, Tal. Newasa. Plaintiffs' lands are situated towards Western side of defendant's lands. On 0607.2017, plaintiffs got measured their lands. On 24.10.2017, defendant got measured its lands. Lands of the parties are adjacent to Ahmednagar – Aurangabad Highway. Defendant is company registered under the Companies Act.

5] Plaintiffs laid the suit *inter alia* contending that defendant is erecting compound wall to its lands. For it, it has taken ditches by encroaching on their lands. In the measurement carried out by TILR, it is found that defendant has made an encroachment adm. 13.50 R area on their lands. When it was brought to the

notice of defendant, even defendant got measured its lands and in which also, it is found that it has encroached on their 13.50 R land. They requested the defendant to deliver possession of encroached area, but it has avoided to it. Ultimately, plaintiffs prayed for recovery of possession of encroached area adm. 13.50 R land from defendant.

6] Defendant resisted the suit by filing its written statement at Exh.11. It has contended that its head office is at Haridwar, State Uttarakhand. So, suit ought to have been filed at the place where its head office is situated. Therefore, the suit is not maintainable. Suit is under valued. Suit is bad for non-joinder of necessary parties. It has further contended that its lands were earlier purchased by Pais Agro Industries on 16.06.1993. Pais Agro Industries has erected compound wall. On 24.08.2016, it has purchased lands. The compound wall is in existence as earlier erected by Pais Agro Industries. It has only repaired the compound wall. Plaintiffs' lands are affected in highway widening. In collusion, plaintiffs have got wrongly measured the lands. Lands are measured on 06.07.2017, but its boundaries were fixed on 11.07.2017. No notice for measurement was served to it. In nutshell, it has denied making encroachment on plaintiffs' lands. In alternate, it has contended that the compound wall is erected in the year 1993, and as such, for more than 15 years, it is in possession of the encroached area openly, peacefully and without any obstruction by the plaintiffs, and thereby, it has become owner of the encroached are by adverse possession.

7] On rival pleas of the parties, trial Court framed issues at Exh.15. Parties went on trial. For plaintiffs, plaintiff No.3 Vishnu Bhang stepped in the witness box as PW - 1 and filed his affidavit of evidence at Exh.16 which is replica of the plaint. Plaintiffs have also examined Cadastral Surveyor Sangram Lawande as PW-2 and also relied on measurement map Exh.31. As against this, defendant examined its employees Nitin Mohokar as DW-1, Somnath Jadhav as DW-2 and Dnyaneshwar Adhav as DW-3. Considering evidence on record, trial Court has held that defendant has encroached on plaintiffs' lands adm. 13.50 R. Ultimately, it has decreed the suit directing the defendant to handover possession of the encroached area to the plaintiffs within two months from the date of decree. Its legality and correctness is challenged by the defendant in this appeal.

8] Following points arise for determination and I record findings thereon for the reasons followed thereafter.

<u>Sr.</u> <u>No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Do plaintiffs prove that defendant has encroached on their 13.50 R land ?	<b>YES</b>
2.	Whether plaintiffs are entitled for recovery of possession of the encroached land ?	<b>YES</b>
3.	What order ?	<b>APPEAL IS DISMISSED.</b>

Reasons for the above findings are as follows :

**:: REASONS ::****POINT NOS. 1 & 2 :**

9] In the oral as well as written notes of arguments Exh.38, adv. Shri. G. M. Sharma for the defendants has submitted that plaintiffs have taken vague plea about the alleged encroachment. 15 days prior notice is mandatory for measurement of land. But, no such notice was given by the Cadastral Surveyor to the defendant. Except map Exh.31, there is no record to show the alleged encroachment. The boundary marks are not fixed on the day of measurement of the land. In absence of prior notice of measurement to the defendant, the measurement carried out by the Cadastral Surveyor is faulty. To support this submission, reliance is placed on *Manohar Mahadeorao Pagrut Vs. Sunanda Ramdas Tharkari, AIR 2008 (NOC) 1683 (Bom.H.C.)*.

10] It is further submitted that the measurement is not carried out as per survey manual. Plaintiffs' lands are adjacent to Ahmednagar – Aurangabad Highway. Plaintiffs' area is acquired for that road, but it is not considered by Cadastral Surveyor. There were no fix points for measurement. Plaintiffs have their hotel, houses in their lands. There are trees in the lands. Defendant has its construction in its lands. But, the construction of the parties and trees in the lands are not shown in the measurement map, and as such, measurement is faulty. In such circumstances, the encroachment cannot be proved. To support this submission, reliance is placed on *Surayya Vs. Usman Khan, Second Appeal*

**No.439/2018 (Bom.H.C.).**

11] It is further submitted that measurement map Exh.31 is computerized, but no certificate U/Sec. 65-B of the Indian Evidence Act is given, and therefore, measurement map cannot be relied upon. To support this submission, reliance is placed on **Chanrabhan Sudam Sanap Vs. State of Maharashtra, AIR ONLINE 2025 SC 58.**

12] It is further submitted that suit is for recovery of encroached area, but suit is not properly valued and proper Court Fees is not paid. The suit ought to have been filed against principal officer of the defendant, but it is filed against the company through Shashikant Zha. But, there is nothing to show that he is officer of defendant company, and as such, the suit is not maintainable. The measurement map is not proved as per Sections 82 and 83 of the Indian Evidence Act.

13] *Per contra*, adv. Shri. C. T. Kadam for the plaintiffs has supported the impugned judgment. He submitted that in the measurement carried out by the plaintiffs as well as defendant, the encroachment made by the defendant on the plaintiffs' lands is clearly shown. Defendant has not examined the Cadastral Surveyor who has measured its lands. So, that evidence is withheld by the defendant. No evidence is led by the defendant to show that it has become owner of the encroached area by adverse possession. Ultimately, he has prayed for dismissal of the appeal.

14] Affidavit of evidence filed by plaintiff No.3 Vishnu Bhang is nothing but replica of the plaint. His evidence about the

alleged encroachment is bare words. Defendant's General Manager Nitin Mohokar (DW-1) is serving with the defendant from April-2018. He has denied making encroachment on the plaintiffs lands but he is deposing on the basis of record. Defendant has come up with a case that Pais Agro Industries had purchased lands in the year 1993 and has erected compound wall. But, Nitin Mohokar DW-1 has deposed that when they purchased the lands in the year 2016, there was fencing to the lands. So, it falsifies defendant's plea that the compound wall is in existence from the year 1993.

15] Somnath Jadhav (DW-2) has deposed that he has snapped photograph Exh.55 on 22.09.2014. So, his evidence is relevant only to the extent of snapping photograph Exh.55 which shows entry gate of the defendant's company and fencing. So, his evidence does not help to resolve the controversy involved in the case-in-hand. On the contrary, his evidence and photograph Exh.55 falsifies that there was compound wall to the lands of defendant in the year 2014.

16] Dnyaneshwar Adhav (DW-3) has deposed that he is serving with the defendant as a Supervisor. He deposed that in the year 1996, he was serving as a Supervisor in the earlier company and continued with the defendant. He has deposed that from the year 1996, there is compound wall to the defendant's lands and there is no change in the compound wall. But, in the cross-examination, he admits that he does not know that in the measurement, it is found that defendant has encroached on plaintiffs' lands adm. 13.50 R. Defendant's witnesses have clearly

admitted that plaintiffs as well as defendant have got measured their lands. At the outset, it needs to be mentioned here that the defendant has not examined the Cadastral Surveyor who has measured its lands. Nitin Mohokar (DW-1) has deposed that both the measurements are wrong, but he does not depose how they are wrong. As such, evidence of the parties is words against words.

17] Sangram Lawande (PW-2) is cadastral surveyor who has measured lands on 07.06.2017. He has deposed that he found that defendant has encroached on plaintiffs' lands adm. 13.50 R. Accordingly, he has prepared the measurement map Exh.31. In the cross-examination, he admits that 15 days prior notice was not given to the defendant. But, the defendant has not dared to say that no notice at all was served to it before measurement of lands. On the contrary, the defendant has come up with a case that the boundary marks shown by it were not considered by the cadastral surveyor. It means that, defendant's agent/employee was present at the time of measurement of lands by Sangram Lawande (PW-2). In spite of searching cross-examination by the defendant, nothing is brought on record by the defendant to impeach credibility of Sangram Lawande (PW-2). The map Exh.31 is prepared by Sangram Lawande (PW-2) himself. Therefore, it does not require certificate U/Sec. 65-B of the Indian Evidence Act. Except absence of 15 days notice, nothing is brought on record by the defendant to show that measurement carried out by Sangram Lawande (PW-2) is faulty.

18] As noted above, defendant's witnesses admit that

defendant has got measured its lands. That measurement map is placed on record by the defendant itself at Exh.46. Worth to be noted that in the map Exh.46 also, it is shown that defendant has made encroachment on plaintiffs' land Gat No.4. Though encroached area is not mentioned in this map, but the encroachment shown in map Exh.46 and map Exh.31 is identical. So, there remains no doubt to say that defendant has encroached on plaintiffs' lands adm. 13.50 R.

19] As said above, the measurement map Exh.31 is duly proved by the plaintiffs. Defendant could not bring on record anything to show that measurement map Exh.31 or measurement carried out by cadastral surveyor Sangram Lawande (PW-2) is faulty. Since Sangram Lawande (PW-2) has stepped in the witness box, there is no need of certificate U/Sec. 65-B of the Indian Evidence Act. Therefore, none of the decision cited supra by the defendant helps it. From all the above discussion, it stands duly proved that defendant has made encroachment on the plaintiffs' lands adm. 13.50 R. No evidence at all has given by the defendant to show that it has perfected the title to the encroached area by adverse possession. Except bare statement in the written statement, nothing is brought on record by the defendant to show that the suit is under valued. Defendant's office is situated within the jurisdiction of this Court. Therefore, this Court has every jurisdiction to entertain and try the suit. Defendant has no authority to remain in possession of the encroached area. **Accordingly, I answer point Nos.1 and 2 in the affirmative.**

**POINT NO.3 :**

20] For the reasons discussed above, I do not find any error or infirmity in the impugned judgment and decree. Therefore, appeal has no merit.

21] Before parting with the judgment, it needs to be put on record that by the application Exh.33, the defendant has prayed for appointment of Court Commissioner for re-measurement of the lands. In its support, it is submitted that for proper adjudication of the matter, Court Commissioner needs to be appointed to re-measure the lands. To lend support to this submission, reliance is placed on Sahebrao s/o Rama Yadav VS. Sarjerao s/o Rama Yadav, 2016(1) ALL MR 348 (Bom. H.C.), Yasin Gulab Shikalkar Vs. Maruti Nagnath Aware and Ors., (2003) 4 BCR 403 (Bom. H.C.) and Jamir Khan Vs. Dharamchand s/o Roopchand Sawala & ors., 2018(3) ALL MR 70 (Bom. H.C.). Ultimately, adv. Shri. G. M. Sharma has prayed for allowing the appeal and setting aside the impugned decree. As against this, adv. Shri. C. T. Kadam has submitted that defendant is trying to collect the evidence through Court Commissioner.

22] As discussed herein above, the lands are already measured by two cadastral surveyors. Defendant has placed on record the measurement map Exh.46, but has not examined the cadastral surveyor to prove or disprove that map. Plaintiffs have proved the measurement map Exh.31 beyond doubt. For all these reasons, I do not find any substance in the defendant's prayer for

re-measurement of lands nor any of the decision cited supra helps the defendant. So, application Exh.33 deserves to be rejected.

23] Record shows that while staying execution of impugned decree, my predecessor has ordered the defendant to deposit the compensation amount in the Court. Accordingly, some amount seems to be deposited by the defendant. That amount needs to be given the plaintiffs as compensation.

24] As held above, the impugned judgment does not warrant any interference. Therefore, appeal has no merit and it deserves to be dismissed, with costs. **Point No.3 is answered accordingly.**

In the result, I pass the following order :

**:: ORDER ::**

1. Appeal RCA No.04/2024 stands dismissed, with costs.
2. Application Exh.33 stands rejected.
3. Compensation amount deposited by the defendant be paid to the plaintiffs.
4. Decree be drawn up accordingly.
5. R & P be sent back to the trial Court.

Date : 09/03/2026

Place : NEWASA

(Haribhau R. Waghmare)

District Judge-1

JO Code : MH001652