

CNR : MHAH180001872014



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|-----------------|----------------------|
| Received on | 30/01/2014 |
| Registered on | 30/01/2014 |
| Decided on | 01/04/2026 |
| <u>Duration</u> | Ys Ms Ds 12 02 02 |

**IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, RAHURI,
TAL. RAHURI, DIST. AHMEDNAGAR**

(Presided over by Mayur E. Pawar)

Regular Civil Suit No. 200097 of 2014

Exhibit No. 92

Raju Trimbak Wagh

Age : 45 Years, Occ. : Agri.

R/o : Aradgaon, Tal. Rahuri,

Dist. Ahmednagar.

...**Plaintiff.**

..**Versus..**

1. Balasaheb Pandhrinath Zuge

Age : 50 Years, Occ.: Agri.,

2. Pramila Balasaheb Zuge

Age : 44 Years, Occ.: Agri.,

3. Atul Balasaheb Zuge

Age : 23 Years, Occ.: Agri.,

4. Janabai Trimbak Zuge

Age : 40 Years, Occ.: Agri.,

5. Kadubai Trimbak Zuge

Age : 65 Years, Occ.: Agri.,

All r/o : Aradgaon, Tal. Rahuri,

Dist. Ahmednagar.

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6. Kisan Kesu Wagh (deceased)

Age : 80 Years, Occ.: Agri.,
R/o : Aradgaon, Tal. Rahuri,
Dist. Ahmednagar.

Legal-heirs-

6A. Sanjay Kisan Wagh

Age : 54 Years, Occ.: Agri.,

6B. Babasaheb Kisan Wagh

Age : 57 Years, Occ.: Agri.,

6C. Vijay Kisan Wagh

Age : 48 Years, Occ.: Agri.,
All r/o : Aradgaon, Tal. Rahuri,
Dist. Ahmednagar.

6D. Urmila Devidas Latke

Age : 64 Years, Occ.: Household,
R/o : Jedhenagar, Bibvewadi,
Ambika Apartment, Flat No. 59, Pune- 97.

6E. Kantabai Shivaji Hapse

Age : 58 Years, Occ.: Household & Agri.,
R/o : Newasa Bk., Tal. Newasa,
Dist. Ahmednagar.

6F. Ashabai Annasaheb Tambe

Age : 42 Years, Occ.: Household & Agri.,
R/o : Chandrapur, Post – Hasnapur,
Tal. Rahata, Dist. Ahmednagar.

6G. Sunita Babasaheb Wagh

Age : 54 Years, Occ.: Household,

6H. Sunita Sanjay Wagh

Age : 52 Years, Occ.: Household,

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6I. Mangal Vijay Wagh

Age : 42 Years, Occ.: Household,

6J. Chetan Babasaheb Wagh

Age : 28 Years, Occ.: Agri.,

6K. Kiran Babasaheb Wagh

Age : 33 Years, Occ.: Agri.,

Def. Nos. 6G to 6K r/o : Aradgaon,

Tal. Rahuri, Dist. Ahmednagar.

...Defendants.

Suit : For measurement, removal of encroachment and recovery of possession.

Counsel appeared :

Shri. M. B. Deshmukh Advocate for the Plaintiff.

Shri. B. B. Urhe Advocate for the Def. Nos. 1 to 3.

Shri. K. N. Dhokne Advocate for the Def. Nos. 6A to 6K.

JUDGMENT(Delivered on 01st April, 2026)

1. This suit is for measurement, removal of encroachment and recovery of possession regarding to the following property situated at Aradgaon, Tal. Rahuri, Dist. Ahmednagar, surrounded by four boundaries :-

| Gat No. | Area H. R. | Assessment Rs. P | Boundaries | | | |
|---------|---------------|---------------------|----------------------|--------------|-------|-------|
| | | | East | West | South | North |
| 109/1/B | <u>1=33</u> | 4=45 | Gat No. 107 & 108 | 110 & 111 | 104 | 154 |

(Hereinafter referred as 'suit property').



Plaintiff's case in nutshell -

2. Plaintiff is the owner and possessor of land gat No. 109/1B admeasuring 1H 33R situated at village Aradgaon, Tal. Rahuri. The suit property is the ancestral property of the plaintiff. Whereas, the defendants are adjoining owners of the suit property. The defendant Nos. 1 to 3 is having the land in gat No. 109 situated towards the western side of the suit property. There is dyke running south-north in between the land of plaintiff and defendant Nos. 1 to 3. Defendant Nos. 1 to 3 used to encroach over the suit property of the plaintiff by destroying common dyke. During the pendency of the suit, the plaintiff applied for the measurement of the suit property along with the properties of the defendants and found the encroachment of 10R at the hands of the defendant No. 6.

3. In the response to the suit summons, defendant No. 1 appeared and file his written statement vide Exh. 16. Where he has denied each and every material allegation alleged by the plaintiff. He denied the fact of the encroachment. In his further additional written statement he submitted that, the land gat No. 109/2/1, 109/2/2 and land gat No. 109/2/3 are the properties of the defendant Nos. 1 to 3. Defendant Nos. 1 to 3 have developed their lands. There is common well in land gat No. 109/2 having the rights of the defendants. But the plaintiff used to obstruct the defendant Nos. 1 to 3 for taking the water from the well. The plaintiff used to encroach over the property of the defendants. Hence, the defendants have filed the RCS No. 298/2014 for the measurement and recovery of the possession. The present suit is filed by the plaintiff is nothing but to abuse of process of law. Hence, he prayed to dismiss the suit. The defendant Nos. 2 and 3 adopted the written statement of defendant No. 1 by filing pursis Exh. 18.



4. In the response to the suit summons, defendant Nos. 6A and 6K appeared and file their written statement vide Exh. 61. Where they have denied each and every material allegation alleged by the plaintiff. They denied the fact of the encroachment. In their further additional written statement they have contended that, initially the defendant No. 6 was not made party to the suit. The measurement was carried out behind back of defendant No. 6. Hence, prayed to dismiss the suit.

5. In the response to the suit summons, defendant Nos. 4 and 5 appeared and they have admitted the claim of the plaintiff by filing pursis vide Exh. 12.

6. On the rival pleadings to the parties my learned predecessor has framed the issues vide Exh. 63. I have recorded my findings to all issues with reasons as below :-

| Sr. No. | Issues | Findings |
|---------|---|---------------------|
| 1. | Whether the defendant No. 6 has made out encroachment in gat No. 109/1/B ? | Proved. |
| 2. | Whether the plaintiff is entitled to get possession of encroached portion ? | Proved. |
| 3. | Whether the plaintiff is entitled for relief as sought ? | In the affirmative. |
| 4. | What order and decree ? | As per final order. |

REASONS

7. In order to substantiate the claim, the plaintiffs have examined the following witnesses -



| Sr. No. | Witness Name | Relevancy | Exhs. |
|---------|-----------------------|--------------------|-------|
| 1 | Raju Trimbak Wagh | Plaintiff No. 1 | 64 |
| 2 | Vaibhav Prakash Bijja | Cadastral Surveyor | 74 |

8. Apart from the ocular evidence, the plaintiffs have also relied on the following documentary evidence.

| Sr. No. | Document | Exhs. |
|---------|----------------------------|-----------|
| 1. | Application for commission | 75 |
| 2. | Court commission order | Article A |
| 3. | Court commission notice | 76 |
| 4. | Statement | 77 |
| 5. | Panchnama | 78 |
| 6. | Map 'B' sheet | 79 |

Plaintiff has closed his evidence vide pursis Exh. 80.

9. In order to debunk the plaintiff's case, the defendant Nos. 6A to 6K are relied on the following witness -

| Sr. No. | Witness Name | Relevancy | Exhs. |
|---------|-------------------|------------------|-------|
| 1 | Sanjay Kisan Wagh | Defendant No. 6A | 83 |

10. Apart from the ocular evidence, the defendant Nos. 6A to 6K have also relied on the following documentary evidence.

| Sr. No. | Document | Exhs. |
|---------|--------------------------------|-------|
| 1. | Power of attorney | 84 |
| 2. | 7/12 extract of gat No. 109/1A | 85 |
| 3. | 7/12 extract of gat No. 109/1B | 86 |

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|----|---------------------------------|----|
| 4. | 7/12 extract of gat No. 109/2/1 | 87 |
| 5. | 7/12 extract of gat No. 109/2/2 | 88 |
| 6. | 7/12 extract of gat No. 109/2/3 | 89 |
| 7. | 8A extract of property No. 242 | 90 |

11. Defendant Nos. 6A to 6K have closed their evidence vide pursis Exh. 91.

Evidence of the Plaintiff

12. PW-1 Raju Wagh testified himself vide, Exh. 64. In his evidence he deposed that, he is the owner and possessor of land gat No. 109/1B admeasuring 1H 33R situated at village Aradgaon, Tal. Rahuri. The suit property is the ancestral property of the plaintiff. Whereas, the defendants are adjoining owners of the suit property. The defendant Nos. 1 to 3 is having the land in gat No. 109 situated towards the western side of the suit property. There is dyke running south-north in between the land of plaintiff and defendant Nos. 1 to 3. Defendant Nos. 1 to 3 used to encroach over the suit property of the plaintiff by destroying common dyke. During the pendency of the suit, the plaintiff applied for the measurement of the suit property along with the properties of the defendants and found the encroachment of 10R at the hands of the defendant No. 6.

13. During cross-examination this witness admitted the fact that, the defendant No. 6 is his uncle. The old survey number of suit property was 65/1. The defendant No. 6 has purchased his land in year 1959. He also admitted the fact that, in year 1973 there was partition in between defendant No. 6 and his father. In that partition, the southern portion of the suit property was allotted to his father and northern portion is allotted to defendant No. 6. At the




time of partition, the east west dyke was created by defendant No. 6 and his father. Rest of the suggestions has been denied by this witness.

14. PW-2 Vaibhav Bijja cadastral surveyor deposed vide Exh. 74. On perusal of his evidence it depicts that, in year 2018, he was serving as surveyor in the office of D.I.L.R. Rahuri. He received the writ from the court for the measurement of the land gat No. 107, 108 and 109 situated at village Aradgaon. He has measured the suit property by the order of his office. He issued notices to the plaintiffs and the defendants. The office copies of the notice is at Exh. 76. Later on, he inspected the suit properties and measured the suit property by ETS machine. He recorded the statement of the plaintiffs and pancha's and recorded panchnama. The statement is at Exh. 77. The Panchnama is at Exh. 78. Later on, he prepared the 'B' sheet, which is at Exh. 79. He further deposed that, defendant No. 6 has encroached over 10 R land of the plaintiff, which is shown by blue color in the map.

15. During cross-examination this witness has admitted the fact that, at the time of measurement their office had not issued the notice to the defendant No. 6 as he was not party to the suit. He also admitted the fact that, he did not get fix point at the time of the measurement. Rest of the suggestions has been denied by this witness.

Evidence of the defendants

16. On behalf of defendant Nos. 6A to 6K, the defendant No. 6A Sanjay Wagh testified himself at Exh. 83. In his evidence, he denied the fact of encroachment. He also stated that, the father of



the plaintiff and defendant No. 6 were the real brother. The land gat No. 109 was purchased by the defendant No. 6 when the father of the plaintiff and defendant No. 6 were joint. Later on, land gat No. 109 was partitioned in between the father of the plaintiff and the defendant No. 6. In that partition, the southern portion of the suit property was allotted to the father of the plaintiff and northern portion is allotted to defendant No. 6. At the time of partition, the east west dyke was created by defendant No. 6 and father of the plaintiff. Initially the defendant No. 6 was not made party to the suit. The measurement was carried out behind back of defendant No. 6.

17. During cross-examination this witness has admitted the fact that, he is unable to tell the area of his own land.

As to Issue No. 1 -

18. In regard to this issue, the plaintiff must have to prove the fact the defendant No. 6 has encroached over the suit property.

19. The learned advocate for the plaintiffs urged that, PW2 cadastral surveyor in his evidence has categorically deposed that, the defendant No. 6 has encroached over 10R land of the plaintiff. He further urged that, the fact of encroachment has been supported by the measurement map which is at Exh. 79.

20. Per contra, the learned advocate for the defendant No. 6 urged that, the defendant No. 6 was not served with the notice of measurement. Furthermore, the D.S.L.R., Rahuri has not carried out the panchnama as per survey manual.

21. In order to ascertain the encroachment there shall be the undisputed boundaries. Encroachment can be the question or matter



of fact which can be seen by the person where the encroachment was witnessed. The fact of encroachment also could be the matter of oral evidence strongly supported by the measurement carried out by the appointment of expert commissioner. The Court has to find that the the extent of encroachment can be done only when the exception and measurement are carried out by the expert.

22. As to the issue of encroachment proved if either of his matter governed by section 36 and 60 of Indian Evidence Act. The measurement can be carried out by the Cadastral Surveyor is the public record which is relevant under section 36 of the Indian Evidence Act.

Section 36 of the Indian Evidence Act, which reads as follows:-

36. Relevancy of statements in maps, charts and plans.- Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Central Government or any State Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Ready reference to relevant portion of Section 60 would be useful which is quoted below:-

60. Oral evidence must be direct.- Oral evidence must, in all cases, whatever, be direct; that is to say -

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it; If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it; If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he

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perceived it by that sense or in that manner; If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds;

23. As can be seen from first, second and third unnumbered clauses of Section 60 of Evidence Act, the fact of encroachment is a matter of three aspects together, namely which can be [1] seen, [2] perceived by sense by taking aid of measurement devices, and [3] an information based thereon.

24. On perusal of report filed by the Cadastral Surveyor vide Exh. 79, it clearly depicts that, defendant No. 6 has encroached over 10R land of the plaintiff in land gat No. ^{e-109 g} 190/1/B. Furthermore, on perusal of panchnama vide Exh. 78, it depicts that, the name of defendant No. 6A i.e. Sanjay Kisan Wagh was mentioned and he signed the panchnama. From which, it can be gathered that, the defendant No. 6A was present at the time of measurement of the suit property. So, I do not find any substance in the contention of the learned advocate for the defendant that, the defendant No. 6 was not served with the notice nor he was present at the time of measurement. Hence, I have no hesitation to answer the issue No. 1 **as proved.**

As to the Issue Nos. 2 and 3:-

25. It is made absolutely clear that, the plaintiff is the lawful owner and possessor of the suit property. The measurement carried out the Cadastral Surveyor clearly point out the encroachment committed by the defendant No. 6 to the extent of 10R over the suit property. Therefore, plaintiff is entitled to recovery the possession of encroached portion of suit properties. Hence, I answer to these issues **in the affirmative.**

Corrected
as per order
below Exh. 01
Dated 06/04/2024
06/04/2024



As to Issue No. 4 -

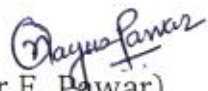
26. The plaintiff by the way of oral as well as documentary evidence proved the fact of encroachment made by the defendant No. 6. In view of that, I answer issue Nos.1 to 3 the following order is passed.

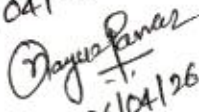
ORDER

1. The suit is decreed with costs.
2. The defendant Nos. 6A to 6K are hereby directed to deliver the possession of 10 R land towards the northern side of land gat No. ^{Q-109 a} (190)1/B of the plaintiff, which is shown in measurement map vide exhibit No. 79 within the two months from the date of this order.
3. Decree be drawn up accordingly.

[Dictated and pronounced in open court.]

Date :- 01/04/2026.


(Mayur E. Pawar)
Civil Judge Senior Division,
Tal. Rahuri, Dist. Ahmednagar.

Corrected as
per order below
Exh. 01 dated
06/04/2026

06/04/26