

MHBI010003242025



Presented on :- 28/01/2025  
Registered on :- 29/01/2025  
Decided on :- 17/03/2026  
Duration :- Yrs. Ms. Ds.  
01- 01- 20

**IN THE DISTRICT COURT AT BEED, DIST. BEED.**  
(Presided over by Shri. Anand L. Yawalkar,  
Principal District Judge, Beed )

**EXH. 12A**

**Reg. Civil Appeal No. 19/2025**

- 1] Shivaji S/o Bapurao Kharad, Age:- 50 years, Occu: Agri., R/o- Malegaon (K), Tq. Georai, Dist. Beed.
- 2] Sakharam S/o Santram Kolekar, Age:- 60 years, Occu: Agri., R/o. As above.
- 3] Ram S/o Laxman Kolekar, Age:- 50 years, Occu: Agri., R/o. As above.
- 4] Sambhaji S/o Bapurao Kharad, Age:- 42 years, Occu: Agri., R/o. As above.

**...Appellants/  
Ori. Defendant No. 17 to 19 and 21.**

**VERSUS**

- 1] Raosaheb S/o Rambhau Kharad, Age:- 75 years, Occu: Agri., R/o- Malegaon (K), Tq. Georai, Dist. Beed.

**...Respondent.  
Ori. Plaintiff**

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- 2] Bhimrao S/o Ramrao Kharad, Age:- 60 years, Occu:- Agri., R/o- Malegaon (K), Tq. Georai, Dist. Beed.
- 3] Natha S/o Ramrao Kharad, Age:- 78 years, Occu:- Agri., R/o- Malegaon (K), Tq. Georai, Dist. Beed.
- 4] Pralhad S/o Parasram Kharad, Age:- 60 years, Occu:- Agri., R/o. As above.
- 5] Khandu S/o Ramrao Panjarkar, Age:- 60 years, Occu:- Agri., R/o. As above.
- 6] Taramati W/o Gitaram Kharad, Age:- 55 years, Occu:- Agri., R/o. As above.
- 7] Laxman S/o Mahadu Bhosale, Age:- 70 years, Occu:- Agri., R/o. As above.
- 8] Tukaram S/o Prabhu Vaykar, Age:- 45 years, Occu:- Agri., R/o. As above.
- 9] Kundlik S/o Kashinath Limbkar, Age:- 75 years, Occu:- Agri., R/o. As above.
- 10] Mahadev S/o Ganpati Vaykar, Age:-75 years, Occu:- Agri., R/o. As above.
- 11] Madhukar S/o Bapurao Kharad, Age:- 53 years, Occu:- Agri., R/o. As above.
- 12] Sudhakar S/o Bapurao Kharad, Age:-50 years, Occu:- Agri., R/o. As above.
- 13] Sanjivani W/o Bhausahab Aher, Age:- 55 years, Occu:- Agri., R/o. As above.
- 14] Meenabai W/o Tanhaji Kharad, Age:- years, Occu:- Agri., R/o. As above.
- 15] Baban S/o Appasaheb Junghare, Age:-45 years, Occu:- Agri., R/o. As above.

- 16] Sidheshwar S/o Ramchandara Vaykar, Age:- 60 years, Occu:- Agri., R/o. As above.
- 17] Madhu S/o Jija Andhare, Age:- major, Occu:- Agri., R/o. As above.
- 18] Ramdas S/o Ramchandra Vaykar, Age:- 65 years, Occu:- Agri., R/o. As above.
- 19] Bapurao Atmaram Kharad, Age:- 58 years, Occ:- Vice Chairman, Nath Multi State Co. Op. Credit Soc. Ltd. Malegaon (Khu), Main Branch Malegaon (Khu), Tq. Georai Dist. Beed.

**...Respondents/  
Ori. Defendant No. 2 to 19**

**Claim:- Suit for Possession  
Appeal under Sec. 96 of the Code of Civil Procedure.**

**Appearance:**

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Ld. counsel Shri. G. M. Shinde, for appellants.  
Ld. counsel Shri. S. B. Rakh for respondent No. 1.  
Exparte against respondent No. 2, 4, 6, 11, 12, 13 & 17.  
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**JUDGMENT  
(Delivered on 17<sup>th</sup> day of March, 2026)**

Being aggrieved by the judgment and order passed in Regular Civil Suit No. 12/2012 by Ld. Joint Civil Judge, Junior Division at Georai on 30/04/2022, appellants/defendant No. 17, 18, 19 and 21 had filed this appeal under Section 96 of The Code of Civil Procedure before this Court.

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2. The parties in this appeal are referred by their original nomenclature as before the trial Court.

3. Plaintiff had filed a suit for possession in respect of a suit property at mouze Malegaon (khu.), Tq. Georai, Dist. Beed in Gut No. 3, admeasuring 63 R., out of it, disputed land is 25 R. Plaintiff submitted that his father Ramchandra Kharad was the original owner of Gut No. 3. During his lifetime, Ramchandra sold 31 R. of land out of 63 R. land to defendant No. 1 to 7 jointly by a sale deed in 1991. Thereafter, Ramchandra sold 4 R. of land to defendant No. 9 by a sale deed in 1994. Plaintiff is his legal heir was in possession of remaining land. As per plaintiff, defendant No. 1 sold 4 R. of land to defendant No. 14 and 8 R. of land to defendant No. 16 by showing false boundaries. Defendant No. 2 sold 2 R. of land to Tanhaji and after his death, name of defendant No. 14 was mutated. Defendant No. 2 further sold 2 R. of land to defendant No. 10 and 11 in the year 1997 and thereafter defendant No. 2 sold R. of land to defendant No. 12 in the year 1996. Plaintiff contended that the land sold by his father Ramchandra was on the north eastern side and remaining land of Ramchandra admeasuring 25 R. of land was on the eastern and western side. Plaintiff alleged that defendant No. 15 without any right in collusion with Talathi, mutated his name on 4 R. of land. Defendant thereafter committed encroachment and had made construction. Hence, he prayed for removal of encroachment.

4. Defendant No. 10 to 13 filed their written statement and submitted that disputed 25 R. of land was false. They denied the boundaries. They admitted the area and survey number of Gut

No. 3. They admitted that Ramchandra was the original owner and denied that plaintiff was his legal heir. They admitted sale of property by Ramchandra to defendant No. 1 to 9. They also admitted sale of land by plaintiff to Tanhaji but denied that sale deeds were made by showing false boundaries. They further submitted that Ramchandra had given 1.5 R. of land to Shivaji Kharad on 99 years on rent on 26/06/1992 and had delivered the possession. He had sold land from Gut No. 3 to other persons and since sale deed, they are in possession of their respective lands. Plaintiff is aware about it. They lastly submitted that 25 R. land in Gut No. 3 was acquired for road and 4 R. of land was waste land.

5. Defendant No. 4, 6, 7 and 9 filed their contesting written statement and admitted the case of plaintiff.

6. Defendant No. 18 and 19 filed their written statement. They denied the description of four boundaries of suit property and submitted that the plaintiff is not only legal heir. They submitted that plaintiff had sold a plot to them and denied of making any encroachment. They submitted that in 1994, Ramchandra on 20/08/1994 sold 4.5 R. of land in Gut No. 3 to defendant No. 18 and Mahadeo and since then, defendant No. 18 is in possession of suit property and plaintiff had no concerned with it. It was further submitted that Ramchandra in 1998 sold 2 R. of land to defendant No. 19 and since then both the defendants are in possession of suit property.

7. Trial Court framed the issues. Plaintiff adduced his evidence and evidence of two witnesses including TILR. Defendants

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failed to adduce their evidence. After hearing plaintiff, trial Court partly decreed the suit and directed defendants to deliver vacate possession by removing houses and huts and area of 10 R. and 5 R., total 15 R. land out of Gut No. 3 as shown in map within two months from the date of order.

8. Heard Ld. counsel Shri. G. M. Shinde for appellant/original defendant No. 17, 18, 19 and 21 and Ld. counsel Shri. S. B. Rakh for respondent No. 1/original plaintiff. Respondent No. 2, 4, 6, 11, 12, 13 & 17 served, but did not appear, hence, proceed with exparte against them. Perused the material on record.

9. After hearing both parties and perusing the material on record, following points arise for my consideration and I have accordingly given findings thereon.

	<b><u>POINTS</u></b>		<b><u>FINDINGS</u></b>
1)	Whether appeal filed by appellants can be remanded back to trial Court under Order 41 Rule 21 of The Code of Civil Procedure?	...	In affirmative.
2)	What order?	...	As per final order.

### **REASONS**

#### **AS TO POINT NO. 1 :-**

10. Originally the case was filed against 16 defendants and present appellants were added by the order passed by the trial Court vide Exh. 59 on 30/06/2016 alongwith other defendants.

11. As plaintiff had filed suit for removal of encroachment and grant of possession on 10/01/2012, thereafter issues were

framed on 15/03/2022. Plaintiff had filed an application at Exh. 50 on 24/01/2014 thereby praying that TILR, Georai be appointed as Court Commissioner to measure the land in Gut No. 3 situated at Malgaon (khu.), Tq. Georai. The said application was allowed on 04/12/ 2014. The order was received by the office of TILR, Georai on 07/01/2015. The land was measured by Sunil More PW-3 on 25/01/2014 and admittedly in the measurement, Shivaji Kharad, Sakharam Kolekar and Ram Kolekar were found in possession of 10 R. of land. Further 0.05 R. of land was found in the possession of Shivaji Kharad, Mohan Kharad and Sambhaji Kharad. Panchnama was done. It is at Exh. 103 and the map prepared by the Sunil More PW-3 is at Exh. 102.

12. As per evidence of Sunil More PW-3 notices were only given to plaintiff and other defendants prior to measurement by registered post A.D. They were filed on record. Admittedly, Shivaji Kharad, Sakharam Kolekar, Ram Kolekar, Shivaji, Mohan and Sambhaji Kharad were not served with notices prior to measurement. They were not aware about it. Only after the measurement was done and after its report, it was revealed that they were in possession of the suit property. Thereafter, plaintiff filed an application on 08/06/2016 at Exh.59 for adding these people i.e present appellant as a party to the suit. This application was allowed on 30/06/2016 and thereafter by amending the suit, present appellant/defendants no.17 to 19 and 21 were added as a party in this suit.

13. Thus, from the factual aspects, it is evident that defendants no.17 to 19 and 21 were not the party to the suit

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when measurement application was preferred before the trial Court and when measurement was done. They were not aware about the measurement and it was done in their absence. Only in the measurement, these defendants no.17 to 19 and 21 were revealed as encroachers alongwith the extent of their encroachment. This measurement report was relied upon by the trial Court and on its basis, the suit was decreed.

14. In the opinion of the Court as the defendants no.17 to 19 and 21 were added in the suit after measurement of land reveals that, even plaintiff was not aware about the boundaries of his land and he was not aware that the present defendants no.17 to 19 and 21 had encroached of his land and only after measurement, he became aware regarding the encroachment made by these defendants. Since the, measurement of suit land was carried without service of notices to these defendants and without their knowledge as the measurement was carried behind their back, it had caused prejudice to these defendants no.17 to 19 and 21. They did not had any opportunity to contest the measurement and raised objection, if any. It violated the principle of natural justice and due process of law. Admittedly they could not cross examine Sunil More PW-3 who measured the disputed land. Such evidence cannot be relied upon. Entire measurement on has been vitiated. Also the judgment of trial court base upon this measurement has also been vitiated.

15. In such situation, it would have been proper if the land was measured again in the presence of these defendants no.17 to 19 and 21 so as to follow the principle of natural justice and to bring transparency in the measurement of land. As it was

not done, in the opinion of the Court judgment of trial Court is not legal and proper and the suit property needs to be measured again in presence of all the parties and by giving them notices of measurement. Thus, considering this, I accordingly answer point No.1 in affirmative.

**AS TO POINT NO.2 :-**

16. As observed, the judgment of trial Court is not legal and proper. The land is required to measured again and as the parties are litigating since 2012. the matter can be made time bound and can be proceeded from the stage of measurement only. Hence, considering this, I pass following order;

**ORDER**

- 1) Regular Civil Appeal is allowed.
- 2) The judgment and decree passed in Regular Civil Suit No. 12/2012 by Ld. Joint Civil Judge, Junior Division, Georai, Dist. Beed, dt. 30/04/2022 is hereby quashed and set aside.
- 3) Matter is remanded back to Ld. trial Court with the directions to appoint TILR for measurement of suit land.
- 4) Parties shall be free to adduce additional evidence in view of the measurement and as per law.
- 5) Plaintiff to bear the cost of measurement.
- 6) Both the parties are directed to appear before the Ld. trial Court on 06/04/2026.

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- 7) Trial Court is hereby directed to dispose off this matter within Six months from the date of appearance of the party.
- 8) Parties to bear their own cost.
- 9) Decree be drawn accordingly.
- 10) R & P be sent back to trial Court.

**Beed,**  
**Dt.17/03/2026**

**(Anand L. Yawalkar)**  
**PRINCIPAL DISTRICT JUDGE,**  
**BEED.**

CNR No. MHBI010003242025

(11) Reg. Civil Appeal No. 19/2025  
Judgment (Exh. 12/A)

Dictated on : 17/03/2026

Transcribed on : 18/03/2026

Checked & signed on : 20/03/2026

I affirm that the contents of this PDF file are word to word  
as per original Judgment / order.

Name of Steno : P. V. Bhosale

Name of Court : Dist. & Sessions Court, Beed,

Sd/-

(P. V. Bhosale)

Stenographer Grade-III