


MHNS070014792022 	Received on	:	12.08.2022.
	Registered on	:	17.08.2022.
	Decided on	:	25.03.2026.
	Duration	:	Y M Days 03 07 13

I N T H E D I S T R I C T C O U R T  
A T - M A L E G A O N  
D I S T R I C T - N A S H I K.

[ Presided over by K. G. Paldewar, District Judge-5, Malegaon ]

REGULAR CIVIL APPEAL NO.44/2022

EXHIBIT NO.32

Anjanabai Nathu Patole,  
 Age – 69 years, Occ. - Agriculturist,  
 R/o. Ajmer Saundane,  
 Taluka – Satana,  
 District – Nashik.

...APPELLANT  
 (Original plaintiff)

VERSUS

Indubai Mahadu Pagar, (Died)  
 Through her LRs  
 1-A) Arun Mahadu Pagar,  
 Age – 47 years, Occ. - Agriculturist,  
 1-B) Chintaman Mahadu Pagar,  
 Age – 45 years, Occ. - Agriculturist,  
 1-C) Bapu Mahadu Pagar,  
 Age – 43 years, Occ. - Agriculturist,

1-D) Bibabai Anil Pakle,,  
Age – 42 years, Occ. - Labour,  
All R/o. Ajmer Saundane,  
Taluka – Baglan,  
District – Nashik.

...**RESPONDENTS**  
(Original Defendants )

**APPEAL UNDER SECTION 96 READ WITH  
ORDER XLI OF THE CODE OF CIVIL  
PROCEDURE.**

**CLAIM : SUIT FOR POSSESSION AND MESNE PROFIT**

**APPEARANCES:**

\*\*\*\*\*

Shri. P.A. Ahire, Advocate for appellant.

Shri. B.S. Shewale, Advocate for respondents.

\*\*\*\*\*

**JUDGMENT**

[Delivered on 25<sup>th</sup> Day of March, 2026.]

The plaintiff to Regular Civil Suit No.72/2009 filed present appeal against the judgment and decree Dated 02.07.2022 passed by Joint Civil Judge Junior Division, Satana, District Nashik dismissed the suit for possession by removing encroachment and mesne profits.

2. The parties are hereinafter referred as per their original status in the suit for the sake of convenience.

**DESCRIPTION OF THE SUIT PROPERTY :**

3. All that the part and parcel of the property –
- i) Land Block No. 414 area 1 H 87 R, revenue assessment Rs.1.42 paise situated at village Ajmer Saundane, Taluka - Satana, District – Nashik out of it 16 R area bounded as under;
- towards – East – Block No.415  
West – Block No.413  
South – Block No.416  
North – Block No.393
- Land Block No. 415 area 1 H 39 R, revenue assessment R.1.32 paise of the defendants situated towards eastern side.  
(Hereinafter this land is referred as 'suit property' for the sake of convenience.)

**CASE OF PLAINTIFF :**

4. It is case of plaintiff that, defendants have encroached upon the land of plaintiff to the extent of 16 R towards eastern side. At the time of encroachment, it was heated arguments in between them. Thus the plaintiff carried measurement of her land in order to locate the encroachment. After measurement of the land, defendants refused to hand over the encroached area of 16 R hence plaintiff constrained to file the suit.

**CASE OF DEFENDANT :**

5. According to defendant, the land Block No.414 earlier old Survey No.199/1/A came to share of erstwhile owner Laxman Gana Patil. The father-in-law of plaintiff and her husband have purchased 3 Acre land by sale-deed in the year 1979 as per the area existed at that time. The said possession was continued till plaintiff as on date. At the time of consolidation of the scheme of Block Numbers, the area 1 H 87 R is incorrectly shown in place of area 1 H 21 R. The plaintiff has shown imaginary encroachment of 16 R land towards east side.

6. Prior to filing of this suit, the plaintiff has filed proceeding before Sub Division Magistrate, Kalwan for removal of encroachment and it was filed on 31.12.2007. The defendant has appeared in the said proceeding and filed her detailed reply. The revenue officer have disposed off the petition of plaintiff by order dated 30.8.2008. The plaintiff has filed appeal against the said order before Additional Collector, Malegaon and the said appeal was disposed off on 29.5.2009.

7. The erstwhile owner of the property was Malji Dama Patil / Pawar. After his demise, name of Pundlik Malji Patil incorporated as Karta of the family. Late Pundlik Patil partitioned the ancestral property in the year 1956 amongst Gana Dama Patil, Bhau Yadav Fulji Patil and Bhikaji Daulat Patil. The revenue entry

No. 1845 is sanctioned. Then late Gana Dama Patil has partitioned his share to his son. As per the said partition, land Survey No.199/1/A area 3 Acre came to the share of Laxman Gana Patil and land Survey No. 199/1/B area 3 Acre came to the share of Rajaram Gana Patil. The land Survey No.199/3 area 3 Acre 12 R came to the share of Madhavrao Gana Patil by partition. Thus, partition entry No. 2797 incorporated to the revenue record.

8. The land of defendant has old Survey No.199/1/B has area 3 Acre. At the time of consolidation, this old Survey Number has given Block No.415 with area 1 H 21 R came to the share of Rajaram Gana Patil by partition. At the time of converting Block numbers in the scheme of consolidation, the area 1 H 79 R is wrongly shown in the name of defendant. The land of plaintiff has old Survey No. 199/1/A has area 1 H 21 R but incorrectly shown as area 1 H 87 R. Therefore the entire measurement of old Survey No.199 was incorrectly carried.

9. The owner of Block No.416 Uttam Daga Pawar has moved application on 20.5.2018 for correction of the area wrongly shown in the scheme of consolidation. Pursuant to the said application, the office of Land Record and Land Measurement after due notices to the parties carried re-measurement of old Survey No.199. The actual possession of the land holders is existed as on date except the incorrect area shown to the record. There is no

change in the boundary of the lands. Therefore, there is no encroachment as pleaded by plaintiff hence prayed for dismissal of the suit.

**OBSERVATIONS OF LEARNED TRIAL COURT :**

10. Learned trial court observed that plaintiff failed to establish encroachment to her land to the extent of 16 R by defendant towards east side. She failed to establish her ownership to the land Block No.414 to the extent of area 1 H 87 R. Further learned trial court observed that defendant has proved the area of land recorded excess to the name of plaintiff in the scheme of consolidation. Further, trial court observed that plaintiff is not entitled to the vacant possession of encroached portion. On all these observations, learned trial court dismissed the suit by judgment and decree.

**POINTS FOR THE DETERMINATION :**

11. In the light of rival submissions and on perusal of the record, following points arise for the determination to which I recorded my findings for the reasons stated below ;

SR.NO.	POINTS	FINDINGS
I.	Whether grounds are justified to remand the suit for trial afresh vide Order XLI Rule 23-A of the Code of Civil Procedure ?	Yes.
II.	Whether judgment and decree passed by learned trial court needs to be set aside ?	Yes.
III.	What order?	The appeal is allowed.

### REASONS

#### AS TO POINTS NO. I TO III :-

#### WHETHER GROUNDS ARE JUSTIFIED TO REMAND THE SUIT :

12. The plaintiff sued for removal of encroachment and possession of the suit. As per the case of plaintiff, defendants have encroached to the suit property to the extent of 16 R. Defendant has denied the said encroachment. The defendant has set up the plea of excess area incorporated to the name of plaintiff in the scheme of consolidation. However, the said issue as to correction

in the record of revenue by virtue of scheme of consolidation cannot be decided by the Civil Court. By virtue of this suit, the only issue is to be decided i.e. encroachment. In fact, the said encroachment shall be described as the suit property in the caption of description of suit property.

13. It is for the plaintiff to establish that the said encroached area i.e. suit property is the part and parcel of her property bearing Block No.414. Once it is established that the said encroached portion is part and parcel of the Block No.414 then only the entitlement to the possession by removing encroached portion could be decided by virtue of this suit. However, the trial court failed to adjudicate this issue.

14. Further, the plaintiff has lead her oral evidence before learned trial court with a case of encroachment of 16 R land. The learned trial court as per order below Exh.1 dated 23.11.2015 appointed Land Surveyor as Court Commissioner to carry measurement of the land of plaintiff and defendants and directed to file report accordingly. As per the measurement report filed by Cadastral surveyor vide Exh.109, it appears that the encroachment to the extent of 16 R from east side and the encroachment to the extent of 32 R from south side to the land Block No.414 is shown.

15. The plaintiff has filed two suits for removal of

encroachment against the same defendants with the same set of plea of removal of encroachment. In other suit bearing RCS No.79/2009, as per the case of plaintiff defendant has encroached 33 R area from south side whereas the report of cadastral surveyor reveals the encroachment to the extent of 32 R from south side. Pursuant to the report of Court Commissioner, the plaintiff has not chosen to carry out amendment in the plaint of both suit. The plaintiff has lead evidence by affidavit as to the encroachment as per the averments of the plaint. Resultantly, both the suit came to be dismissed.

16. The defendant has moved application for measurement of these lands to the office of District Inspector of Land Records. The said office has carried measurement of the lands. It was not the order of the Civil Court but the said measurement at the request of defendant. After the said measurement by the office of DILR, there is no encroachment by the defendant to the land of plaintiff.

17. On the backdrop of this factual position, the issue as to encroachment is not decided. The averments of the plaint coupled with evidence by affidavit of the plaintiff, measurement carried by Court Commissioner and the measurement carried by DILR varies the area of encroachment. Therefore the said issue left unanswered and same shall be adjudicated by extending

opportunity to the plaintiff by trial afresh before learned trial court.

18. On that count, learned advocate of appellant filed pursis vide Exh.31 that the suit be remanded for afresh trial in order to carry out necessary amendment to the plaint as per the area of measurement. Learned advocate for respondents have strongly objected to remand the suit since the amendment to the plaint is beyond period of limitation also the issue has been decided by the trial court as to the encroachment.

19. In the light of this submission coupled with the opportunity to plaintiff to establish her case before learned trial court, it is justified to remand the suit for trial afresh. If this opportunity to the plaintiff is not extended then that would lead to curtailing her opportunity and she is not able to set up her case again only on failure of amendment to the plaint in terms of report of measurement.

20. The provisions of Remand vide Order XLI Rule 23-A of the Code of Civil Procedure envisages;

**23-A Remand in other case** – Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the appellate. Court shall

have the same powers as it has under rule 23.

21. On the backdrop of this legal position coupled with reasons foregoing, the grounds are justified to remand the suit for trial afresh. Hence I answer Point No. I in the affirmative.

**WHETHER JUDGMENT AND DECREE PASSED BY TRIAL COURT NEEDS TO BE SET ASIDE ?**

22. As observed above, the suit needs to be remanded to trial court for trial afresh. Therefore, the judgment and decree passed by learned trial court needs to be set aside. I answer Point No. II in the affirmative. In result, the appeal succeeds. With this, I pass following order;

**ORDER**

1.	The appeal is allowed;
2.	The judgment and decree passed by Joint Civil Judge Junior Division, Satana, District - Nashik in Regular Civil Suit No.72/2009 Dated 2.7.2022 is set aside.
3.	The suit is remanded for trial afresh vide Order XLI Rule 23-A of the Code of Civil Procedure.

4.	The Regular Civil Suit No.72/2009 is restored before learned trial court.
5.	Learned trial court shall extend opportunity to plaintiff to carry necessary amendment to the plaint and the said application for amendment shall be decided on merits.
6.	Learned trial court shall extend opportunity to both the parties to lead their oral as well as documentary evidence and then to decide the suit on merits without being influenced by observations of this court in above appeal.
7.	The plaintiff as well as defendants also their learned advocates shall extend co-operation to learned trial court for expeditious disposal of the suit as early as possible without protracting the hearing of the suit.
8.	Learned trial court is at liberty to saddle reasonable cost on the default party who tried to protract the hearing of the suit and at liberty to pass further appropriate order accordingly.
9.	Both the parties shall appear before learned trial court on 28.04.2026 vide Order XLI Rule 26-A of the Code of Civil Procedure.

10.	Parties to bear their own costs.
11.	Decree be drawn up accordingly.
12.	The Record and Proceedings of Regular Civil Suit No.72/2009 be sent back to the trial court along with certified copy of judgment and decree of this appeal for filing the same with original proceeding of the suit and for making entry of the judgment of this court in the register of civil suits.
13.	Proceedings closed.
	Dictated and pronounced in open Court.

Place: Malegaon, Nashik.

Date : 25.03.2026.

( **K.G. Paldewar** )

District Judge-5, Malegaon,

Dist. Nashik.

Arguments heard on	5 <sup>th</sup> , 19 <sup>th</sup> Day of January , 6 <sup>th</sup> , 13 <sup>th</sup> Day of February and 25 <sup>th</sup> Day of March, 2026.
Judgment delivered on	25 <sup>th</sup> Day of March, 2026.
Dictated on	25 <sup>th</sup> Day of March, 2026.
Transcribed on	25 <sup>th</sup> Day of March, 2026.
Checked and signed on	25 <sup>th</sup> Day of March, 2026.

**CERTIFICATE**

I affirm that the contents of this PDF file Judgment/Order is same and as per the original Judgment/Order.

Name of the Stenographer	:	N. D. Patil
Name of the Court	:	District Court-5, Malegaon
Date of Judgment/Order	:	25.03.2026.
Judgment/Order signed on	:	25.03.2026.
Presiding Officer	:	K.G. Paldewar
Judgment/Order uploaded on	:	25.03.2026.