

Reg. Civil Appeal No. 61/2019
Gajanan ..vs.. Ukandi and ors.

Received on	18/10/2019
Registered on	22/10/2019
Decided on	16/03/2026
Duration	06 Y. 04 M. 26 D.

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, WASHIM.
[Presided over by Anil Subramaniam]

Regular Civil Appeal No. 61/2019
CNR No. MHWS010019442019

Exh. No. 17

1)	Gajanan Hanuman Gote, Aged about 30 years, Occu. Agriculture, R/o. Tondgaon, Tq. & Dist. Washim.	... Appellant.
<u>VERSUS</u>		
1)	Ukandi Ganpat Gardane, Aged about 55 years, Occu. Agriculture,	... Respondents.
2)	Navnath Sopan Gote, Aged about 42 years, Occu. Agriculture,	
3)	Atmaram Shriram Gote, Aged about 56 years, Occu. Cultivator, All R/o. Tondgaon, Tq. & Dist. Washim.	

APPEAL UNDER SECTION 96 OF THE CIVIL PROCEDURE CODE

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Appearance:-

Mr. G. K. Gaikwad, Advocate for appellants.

Mr. A. N. Nene, Advocate for respondents.

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J U D G M E N T

(Dated 16/03/2026)

1. By the present appeal, the appellant/original plaintiff is challenging the judgment and decree passed by Ld. 4th Jt. Civil Judge (Jr. Dn.), Washim in RCS No. 161/2016 dated 31/08/2019.
2. The plaintiff/appellant filed the suit described the property in paragraph No. 1 of the plaint admeasuring about 2 H 44 R. It is contended that the

suit property was purchased by two registered sale-deeds and since then, he is in occupation of the said premises as owner and accordingly, names are mutated. The plaintiff owns 1 H 22 R of land in Gat No. 21 of village Devthana, Dist. Washim. It is further alleged that defendants since 2013, broke Dhura and started encroaching slowly and is encroaching above land of the plaintiff and cultivating the same. Considering alleged encroachment, the plaintiff applied to the Ld. TILR for measurement and accordingly, measurement was carried out and on 28/05/2016, boundaries were fixed. The land admeasuring 1 H 11 R was found in the possession of the plaintiff and defendants was seen to have encroached upon 6 R of land and defendant Nos. 2 and 3 have encroached upon 5 R of land. The defendant Nos. 2 and 3 have breached the village boundary between Tondgaon to Devthana and entered into the field of the plaintiff and forcibly taking crops therein. The defendant No. 1 is adjoining land owner and defendant Nos. 2 and 3 from village Tondgaon are adjoining land owners. When the defendants were obstructed from such encroachment, they caused physical violence and have caused loss of crops of around Rs. 6,000/-. Hence, the plaintiff filed the suit for removal of encroachment of 11 R of land and for Mesne Profit.

3. The defendants contested the claim contending that the description is not properly mentioned. It is denied that the property was purchased and that encroachment was carried out and any loss was caused or any measurement has taken place as stated. It is further pointed out that unless Gat Nos. 281, 280 and 747 are jointly measured, it not possible to come to a conclusion of encroachment and hence, the suit be dismissed.

4. In pursuance thereto, the Ld. Trial Court framed issues vide Exh. 15. The plaintiff examined himself and also examined the Surveyor. The defendant Navnath examined himself. After hearing both the sides, the Ld. Trial Court dismissed the suit. Hence, the present appeal.
5. Heard both sides. Considered the submissions advanced. Following points arise for my consideration and I answer the same as under for the reasons stated hereinafter.

Sr. No.	Points	Findings
1]	Whether the plaintiff establishes that defendants have encroached upon his property ?	... Does not survive.
2]	Whether the plaintiff is entitled for any relief ?	... Does not survive.
3]	Whether the impugned judgment and decree requires any interference ?	... In the affirmative.
4]	What order ?	... As per final order.

REASONS

As to Point Nos. 1 & 2 :-

6. If we consider the written notes filed, the plaintiff has stated that the measurement map has not been considered. The Ld. Trial Court has failed to appreciate that the encroachment is beyond village boundary. The Ld. Trial Court failed to appreciate that there is no error in the measurement. It is further contended that the measurer in collusion with the respondents has not mentioned what is area in occupation of the appellant and respondents. It is contended that there is specific encroachment shown of the area in the map. Thus, it is necessary to consider the said map and the evidence.
7. The map is available at Exh. 45. The standard measurement of width of

the village boundary is conspicuously absent in the said map. Encroachment is shown of lengthwise and widthwise on the northern and eastern portion from Gat No. 747 of village Tondgaon and 280 of the plaintiff's village. One has to consider that measurer has not shown any permanent boundary marks in the entire measurement shown. The original measurement and layout of map is absent and not filed by the measurer.

8. The measurer was examined and in his cross examination, he has pointed out that Gat No. 281 is not adjoining to Gat No. 747. He further admits that he has not measured the entire Gat Numbers in Survey No. 66, neither has he mentioned Gat Nos. 747 and 280. He does not know dimensions of the boundaries between two villages and the area under such boundaries. He has not measured the boundary during the measurement. He does not remember if there is Dhura between Gat Nos. 280 and 281 and there are trees on the said Dhura. On perusal of the map, some trees are shown. The exact area in the occupation of the parties is not mentioned or calculated by the measurer. Thus, evidence of the measurer does not inspire the confidence.
9. It is also necessary to point out that the property was purchased by defendant No. 3 and the plaintiff was mediator in the said sale-deed. Considering overall circumstances of alleged encroachment and above village boundaries and also with regard to lack of measurement and errors committed by the measurer, there is certainly doubt with regard to the measurement carried out. It was harped upon that the plaintiff has not stated exact dates of encroachment and when was his ownership earlier and area under his occupation. It is pointed out in the cross examination that there is long standing Dhura and long standing trees

between the two properties. In these circumstances, it is necessary to consider that the suit is based on title and not on previous occupation and hence, one has to consider this aspect in its proper senses.

10. In his cross examination, the defendant has been placed with a suggestion that boundary of Tondgaon village and the plaintiff's village is having width of 33 feet and that said 33 feet has been encroached by the defendants, if that is said position. He has specifically stated that the notice was not received by him. The notices is seen to have been given to the plaintiff for service and no record is available of service of these notices of measurement on the defendants. The plaintiff does not know even that he served the notices. Considering these circumstances, the measurement is in doubt. In such circumstances, one has to consider whether the suit is required to be dismissed or there is some other remedy. In case of encroachment of such nature, evidence and the act of the measurer is of paramount importance. This more so in case of Government measurer. The plaintiff can only pay necessary charges and provide documents and pray for measurement and hope that measurer carries out measurement properly. Thus, the plaintiff cannot be at fault when he applies above formalities. In this case, this formalities are applied. Thus, one has to apply judgment of *Vijay Shrawan Shende ..vs.. State of Maharashtra, reported in 2009 (5) Bom. CR 306*, as held by the Hon'ble High Court and re-measurement is only option in such cases. Hence, I refrain myself from answering point Nos. 1 and 2 and hold that point Nos. 1 and 2 does not survive.

As to Point No. 3 -

11. The Ld. Trial Court failed to appreciate that the plaintiff has carried out his job of getting property measured through the Government Surveyor.

Errors or mistakes of the Surveyor cannot be put by the plaintiff. Directions is the case of *Vijay Shrawan Shende ..vs.. State of Maharashtra, reported in 2009 (5) Bom. CR 306* are clearly applicable to the facts of the present case. In such circumstances, I am inclined to set aside the order and remand the matter to the Ld. Trial Court with following directions in compliance of judgment of *Vijay Shrawan Shende*. Hence, I pass the following order -

ORDER

- 1] The appeal is partly allowed.
- 2] The judgment and decree passed Ld. 4th Jt. Civil Judge (Jr. Dn.), Washim in RCS No. 161/2016 dated 31/08/2019 is hereby set aside.
- 3] The ld. Trial Court to conduct a fresh inquiry as contemplated under Order 26 Rule 10(3) of CPC and to consider guidelines in the case of *Vijay Shrawan Shende ..vs.. State of Maharashtra, reported in 2009 (5) Bom. CR 306* and follow the same.
- 4] At the instance of plaintiff, the Ld. Trial Court to appoint Court Commissioner with directions to
 - a) measure such appropriate survey numbers/Gat numbers as may be deemed fit and show their demarcations for the said properties.
 - b) map to also show actual holdings of the parties,
 - c) areas of holding of each of parties to the suit be specifically mentioned,
 - d) the occupation of the parties on the four boundaries of each of the parties to the suit be mentioned in the map.
 - e) the alleged dimensions of encroachment portion be specifically marked, if any.

- 5] On receipt of said map, objection be called to the said measurement and the Court to consider if such objection required re-measurement to remove errors made by the measurer, if any.
- 6] On finalization of the map, the Ld. Trial Court to compare the sale deed boundaries and the actual holdings and consider relief claimed by the plaintiff and if he is entitled for the same.
- 7] Needless to say that the parties to co-operate for early decision of the said dispute.
- 8] R & P be returned to the trial Court as per rules.
- 9] The ld. Trial Court to decide the dispute uninfluenced by any of the findings in any of the order stated herein before.
- 10] Parties shall be at liberty to adduce any additional evidence subsequent to such inquiry, if so required.
- 11] Parties to appear before the Ld. Trial Court on 06/04/2026.
- 12] Inform to Ld. Trial Court, accordingly.
- 13] No order as to costs.
- 14] Decree be drawn up accordingly.
- 15] Reg. Civil Appeal No. 61/2019 stands disposed off.

Date:- 16/03/2026.

(Anil Subramaniam)
Principal District Judge,
Washim.

CERTIFICATE

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

Name of Stenographer	:	A. W. Ajmire, Steno (Grade II)
Court Name	:	Principal District & Sessions Judge, Washim.
Date of order/Judgment	:	16/03/2026
Judgment Dictated on	:	16/03/2026
Order/Judgment signed by Presiding Officer on	:	24/03/2026
Order/Judgment uploaded on	:	27/03/2026