

MHTH150006722011 	Received on	:	04/02/2025		
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IN THE COURT OF THE DISTRICT JUDGE-1, PALGHAR.

AT : PALGHAR

(Presided over by A. R. Rahane)

District Judge-1, Palghar

Regular Civil Appeal No. 26/2011

Exh.No. 85

Ramesh Kalu Patil Age 55 years, Occupation : Agriculturist R/o. Nihe, post Nihe, Taluka, District Palghar.		–	Appellant (Original Defendant)
V/s			
Jagannath Balu Patil [DECEASED]		–	Respondents (Original Plaintiff)
1/1	Smt. Jaywanti Jagannath Patil (Widow) Age 65 years, Occupation : Household		
1/2	Subhash Jagannath Patil (Son) Age 51 years, Occupation : Agriculture		
1/3	Pundalik Jagannath Patil (Son) Age 42 years, Occupation : Agriculture		

1/4	Pramod Jagannath Patil (Son) Age 44 years, Occupation : Agriculture 1/1 to 1/4 R/o. Nihe, Post Nihe, Taluka, District Palghar.		
1/5	Smt. Chetana Chandrakant Patil Age 50 years, Occupation : Household R/o. Pochade, Taluka, District Palghar.		

J U D G M E N T

(Delivered on this 12th June 2026)

1] **Chronology of events-**

- a. Ld. Trial Court decreed R.C.S. No. 66/1999 on 25/04/2011.
- b. First Appellate Court dismissed the said suit by passing Judgment and Decree in Civil Appeal No. 26/2011.
- c. Honourable Second Appellate Court in Second Appeal No. 46/2015 framed an issue and directed First Appellate Court to decide the same on the basis of evidence available on record and evidence of Cadestral Surveyor and his report.

2] The parties are hereinafter referred by their original nomenclature mentioned in the suit.

CASE OF PLAINTIFF :

3] 32M certificate is issued in favour of the plaintiff on the basis of which he seeks declaration of his title to the suit land bearing Gat no. 100 part admeasuring 0-30.0 R, Old Survey No.116/5/part. Defendant's land is also part of Gat No.100. Both the lands are on the bank of river Surya. Plaintiff and defendant are adjoining lands holders. Plaintiff is apprehending obstruction to his possession in the suit land and thus, filed suit for declaration of his title and injunction.

CASE OF DEFENDANT :

4] It is the defendant's case that subject suit land, i.e., old survey no.116/5/part and his land, are on the bank of river 'Surya'. It is his case that due to floods, there was displacement of upper layer of the soil of Gat No.100. Thus, there are no boundaries left to identify suit land and taking advantage of this fact, plaintiff is attempting to encroach over his land.

ISSUE FRAMED BY HONOURABLE SECOND APPELLATE COURT :

	<u>ISSUE</u>	<u>FINDING</u>
1.	Whether the plaintiff proves that defendant has obstructed his possession over the suit land ?	In the negative.

EVIDENCE :

5] As per directions of Honourable Second Appellate Court, evidence of Cadestral Surveyor is recorded by this Court at Exh.49. My Ld. Predecessor recorded chief examination of Cadestral Surveyor. He was not cross-examined by defendant on the day of conclusion of his chief examination. So, My Ld. Predecessor passed 'No Cross-examination' order on 19/05/2026. Thereafter, My Ld. Predecessor got transferred in Annual General Transfer. She was relieved on 30/05/2026. Thereafter, Ld. Advocate for defendant filed an application at Exh.83 for setting aside 'No Cross-examination' order. The said application was allowed in the interest of justice and to avoid multiplicity of litigation. Thereafter, cross-examination of Cadestral Surveyor was concluded on 10/06/2026.

DOCUMENTARY EVIDENCE ON RECORD IS AS FOLLOWS :

Sr. No.	Exh. No.	Document
1	50	Objection of defendant to T.I.L.R. in respect of measurement.
2	51	Measurement application of plaintiff no.1/3.
3	52	Online application for measurement.
4	53	SBI challan
5	54	Letter from Cadestral Surveyor to parties for submission of documents
6	55	Copy of death certificate of Original plaintiff Jagannath Balu Patil

7	56	7/12 extract of suit property
8	57	Copy of plaint of R.C.S. No. 66/1999.
9	58	Copy of written statement of R.C.S. No. 66/1999.
10	59	Order of Honourable High Court in Second Appeal No. 46/2015 with Civil Application No. 103/2015.
11	60	Measurement order.
12	61	Measurement notice dated 24/06/2025.
13	62	Panchanama dated 07/07/2025.
14	63	Statement of plaintiff no. 1/3 dated 07/07/2025.
15	64	Letter from T.I.L.R. to the Court dated 16/07/2025 about postponement of measurement due to heavy rains.
16	65	Reminder letter from the Court to T.I.L.R. dated 19/07/2025.
17	66	Notice dated 07/08/2025 to parties for measurement.
18	67, 67-A and 78	Measurement panchanama dated 21/08/2025.
19	68, 68-A and 79	Statement of plaintiff dated 21/08/2025.
20	69	Map-A
21	70	Tracing Paper Map
22	71	Map-B
23	76	Measurement Report of Cadestral Surveyor to T.I.L.R.
24	77	Letter from Cadestral Surveyor to Court dated 16/10/2025.
25	80	Map-C

ARGUMENT :

6] It is submitted on behalf of plaintiff that as per evidence of Cadestral Surveyor on the first date fixed for measurement, no proceeding could be carried out due to heavy rain. Thereafter, after giving due notices to the parties, measurement of suit property was carried out. Statement of plaintiff was recorded. Panchanama was prepared. Measurement map was prepared. Respective boundaries of plaintiff, defendant are shown in the map. It is not possible that land of plaintiff alone would be washed away due to Surya river. The evidence on record shows that defendant has obstructed possession of plaintiff. Hence, the said issue be answered in affirmative.

7] Ld. Advocate for defendant submitted that Cadestral Surveyor has not carried out measurement as per prescribed procedure. He did not issue notices to adjacent land holders without which it is not possible to fix boundaries. He has not acted in light of subject matter of dispute between the parties. He has given material admissions in cross-examination. His measurement map is not authenticated and it has no foundation. There is no evidence that map is as per original record. His evidence is not sufficient to prove that defendant obstructed possession of plaintiff over suit land. Hence, the said issue be answered in the negative.

REASONS FOR FINDINGS

8] The Cadestral Surveyor has deposed that entire area of Gat no.100 Mouje Nihe Taluka Palghar is 14 H 95 R. He has deposed in chief examination that he has shown boundary of the whole Gat by black colour. He has admitted that boundaries of survey number and gat number are fixed on the basis of boundary marks. However, perusal of his measurement map reveals that he has not shown any boundary marks of Gat no.100. Admittedly, he has not issued notice to land holders of various sub-divisions of Gat no.100. The fact that Gat no.100 is divided into several sub-divisions is apparent from 7/12 extract of suit property which depicts suit property as land bearing Gat No. 100/20. Hence, the fixation of boundary of Gat no.100 in measurement map does not appear to be proper.

9] Cadestral Surveyor has admitted in cross-examination that, their office does not have record of sub-divisions of Gat no.100. Hence, it is implied that their office does not have maps of sub-divisions of Gat no.100. Cadestral Surveyor has further admitted in cross-examination that, if there are no maps of sub-divisions, then, all land holders of respective sub-divisions are to be called for measurement for fixation of boundaries and accordingly, maps of sub-divisions are prepared.

10] Despite knowing the prescribed procedure, by admission of Cadestral Surveyor himself, he did not verify who

were adjacent land holders of the sub-division which was to be measured. He has admitted that he did not issue notices to adjacent land holders. He has admitted that, there is no entry in panchanama to show presence of adjacent land holders on the spot during measurement. He has further deposed that he took information about adjacent land holders from plaintiff after going on the spot for measurement. Thus, it is evident that he did not issue prior notices to adjacent land holders.

11] Cadestral Surveyor has deposed in cross-examination that panch witnesses for the purpose of measurement were on the spot, he did not call them, plaintiff himself called the panch witnesses.

12] Cadestral Surveyor has admitted that he has measured as per boundaries shown by plaintiff. He has admitted that he does not have record to show to which sub-division plaintiff's land belongs to. He has not shown boundary marks in the form of compound, wall, trees or Cactus. He has admitted that they had to confirm while measuring sub-division the boundaries shown by applicant tally with their record. He has further admitted that there is no other record to confirm land of plaintiff other than bare words of plaintiff.

13] It is apparent from evidence of Cadestral Surveyor that although it was necessary for him to measure suit property in presence of adjacent land holders, he has not issued notice to

them prior to measurement. He has shown boundaries merely at the behest of plaintiff. He does not even know to which subdivision, suit property belongs to. Existence/location of suit property remains ambiguous. There is no corroborative record to support the measurement map. As such, the said measurement map remains unauthenticated.

14] Evidence of Cadestral Surveyor is not sufficient to prove plaintiff's possession over suit land and consequently, not sufficient to prove alleged obstruction by defendant to plaintiff's possession over suit land. As such, the said issue requires to be answered in the negative. Accordingly, following order is passed.

ORDER

The issue "Whether the plaintiff proves that defendant has obstructed his possession over the suit land?" is answered in the negative.

Date : 12/06/2026

Palghar

(A. R. Rahane)

District Judge-1, Palghar.