



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 233 OF 2026

Babasaheb Dhondiba Kute And Others

VERSUS

Khandu Hari Wadekar Died Through Lrs Sampat Khandu Wadekar And
Others

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Mr. S. S. Dixit, Advocate for Appellants

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CORAM : R.M. JOSHI, J
DATE : JUNE 11, 2026

PC :

1. Learned Counsel for Appellants submits that suit filed by Appellants bearing Special Civil Suit No. 9/2001 for removal of encroachment against defendants. By common judgment, a decree passed in Special Civil Suit No. 9/2001 i.e. filed by Appellants and Special Civil Suit No. 394/200 filed by Respondents, order dated 03.02.2007 came to be passed. Being aggrieved by said judgment and order, Appellants preferred Appeal No. 21/2007. It is his submission that First Appellate Court allowed Appeal by holding that measurement carried out is only of suit property and adjoining properties were not measured. It is his submission that even if First Appellate Court comes to such conclusion, in view of settled position of law, First Appellate Court ought to have directed fresh measurement and ought not to have dismissed suit. This, according to him, becomes substantial question of law in this Appeal.

2. Perusal of impugned order passed by First Appellate Court indicates that Appeal came to be allowed solely on ground that measurement carried out in respect of suit property is faulty. It is settled position of law that if measurement is not proper, it is duty of Court to direct re-measurement of property. Hence, following substantial question of law arises in this Appeal:

“Whether First Appellate Court committed error in dismissing suit by holding that measurement carried out in respect of suit property is incorrect and whether First Appellate Court was required to direct re-measurement of suit property instead of dismissing suit.”

3. Issue notice to Respondents, returnable on 13.07.2026.
4. Call record and proceedings.
5. In addition to usual mode of service, private service is allowed.

(R. M. JOSHI, J.)

Malani