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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRA No. 19 of 2015
Shrikrushna v. Vasudeo and ors

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's Orders.

Court's or Judge's orders.

Mr A. V. Bhide, Advocate for applicant
 Mr T. G. Bansod, Adv for R-1
 Respondents 2A to 2D served

CORAM : A. P. BHANGALE, J

DATED : 19th August 2015

1. Heard learned counsel for the parties. This revision has questioned legality and propriety of order dated 8th November 2014 passed by the Civil Judge, JD, Dhamangaon Railway in Regular Civil Suit No. 15 of 2009 rejecting applicant/defendant no.2' application for dismissal of suit.

2. Application filed application (exhibit 42) for dismissal of suit on the ground that suit was originally filed for perpetual injunction, but plaintiff amended the plaint and added prayer for possession of the encroached portion. It is submitted that original defendant Vishnu had sold suit land to 2nd defendant on 24th April 2009. During the pendency of suit, on 26.9.2010 said Vishnu died and thereafter plaintiff impleaded his legal representatives and the

encroachment continued, according to the plaintiff.

3. Case of the plaintiff before the trial Court is that on 15.6.2010 he executed sale deed in favour of one Shailesh Zopate. It is mentioned in the said sale deed that after disposal of civil suit, the possession of the encroached area will be given to Shailesh Zopate. He submitted that defendant Vishnu sold land of plaintiff to 2nd defendant who is having possession over the encroached land. According to him, cause of action thus continues against legal representatives of Vishnu.

4. Learned trial Judge has observed that plaintiff is claiming ownership over encroached area and, therefore, unless evidence comes on record, claim of defendant that there is no cause of action against him, cannot be accepted.

5. I find that there is boundary dispute between the parties and according to learned counsel for plaintiff, measurement plan is already placed on record. If that is so, after recording evidence of competent surveyor who measured the land, learned trial Court can decide that issue including that of alleged encroachment and extent thereof, valuation of suit etc. for the purposes of jurisdiction and court fees. Since I am informed that issues are already framed and suit is posted for evidence, I think, there is no need to interfere in the impugned order. Learned trial Judge to hear the parties after they adduce evidence and

decide the suit as early as possible.

6. With the above observations, revision application is dismissed with no order as to costs.

JUDGE

joshi