

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4918/2015

Motiram s/o Sukaji Bahekar and others

..Vs..

Netram s/o Kusoba Kawade and others

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

Court's or Judge's orders

Mr. V.R. Borkar, Advocate for the petitioners.
Mr. S.S. Dhengale, Advocate for respondent No.1.

CORAM : Z.A.HAQ, J.

DATED : 22.12.2016.

The petitioners - plaintiffs have challenged the order passed by the trial Court rejecting the application (Exh. No.28) praying that the Taluka Inspector of Land Records, Amgaon be appointed as Court Commissioner to carry out measurement and submit the report about the alleged encroachment on the suit field by the respondent No.1 - defendant No.1.

Shri V.R. Borkar, learned Advocate for the petitioners has submitted that the learned trial Judge has committed an error in rejecting the application observing that the preliminary issue on the point of limitation is required to be decided and, therefore, the appointment of Commissioner is not necessary. It is submitted that the defendants claim that they have acquired title by adverse possession and, therefore, to show that the claim made by the defendants is false, it is necessary to have

on record the measurement report so that it will be clear whether there is encroachment or not and if there is encroachment, since what date.

The contention on behalf of the plaintiffs is misconceived. The factum of alleged encroachment and the date on which encroachment is made by the defendants is not relevant for deciding the point of limitation and the plaintiffs have to satisfy the Court that the plaint is filed within the prescribed period of limitation from the date on which the plaintiffs claim that cause of action had arisen. Even otherwise, the Court Commissioner cannot be appointed to collect the evidence and it is the responsibility of the plaintiffs to discharge the burden to prove their case.

I do not see any patent illegality or infirmity in the impugned order which necessitates interference by this Court in the extraordinary jurisdiction. The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE