

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

WRIT PETITION NO. 7635/2018

Kesarilal S/o Dwarkaprasad Jaiswal & anr.

..VS..

Kanhaiyalal S/o Dwarkaprasad Jaiswal

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

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : 19/11/2018

None appears for the petitioners.

The original defendants have filed this petition to challenge the judgment passed by the District Court dismissing their appeal filed under Order 43 Rule 1 R of the Code of Civil Procedure, 1908 (for short "the Code of 1908"). The petitioners (original defendants) have also challenged the order passed by the trial Court by which the application filed by the respondent (original plaintiff) under Order 39 Rules 1 and 2 read with Section 151 of the Code of 1908 is allowed, and the defendants are restrained from encroaching over the portion of the suit property till adjudication of the civil suit.

The trial Judge, after considering the material placed on record of the trial Court, has held that the plaintiff has established prima facie case in his favour. The learned trial Judge has recorded that name of the plaintiff is recorded in the revenue records as the owner of the suit property. The trial Court passed restraint order against the defendants on 22/06/2015. The defendants filed appeal before the District

Court which is dismissed on 18/11/2015. This petition is filed on 15/06/2016. This writ petition was dismissed for want of prosecution, however, it came to be restored by the order dated 24/04/2018. The petitioners have not taken steps to circulate the matter for appropriate orders. The restraint order passed against the defendants is operating for more than three years.

In view of the above facts, I see no reason to interfere in the matter.

The writ petition is **dismissed**. No costs.

JUDGE

Ansari