

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

WRIT PETITION NO.4809 OF 2021

Premgopal s/o Jayanarayan Mantri
Vs.
Ashafaqullah s/o Hamidullah Khan

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

Court's or Judge's orders

Mr. R. M. Pande, Advocate for petitioner.

CORAM : AVINASH G. GHAROTE, J.
DATE : 29/11/2021

Heard Mr. Pande, learned counsel for the petitioner.

2. The petition challenges order dated 28.09.2021 passed by the learned Trial Court below Exh.154, rejecting the application for clubbing of RCS No.498 of 2012 and RCS No.499 of 2012. It is contended by Mr. Pande, learned counsel for the petitioner, relying upon ***Zakinaben and others Vs. Babubhai Alimohmad Kapadia and others, AIR 1999 Gujarat 118***, that the consolidation of the suit can be ordered under inherent powers and consent of parties is not necessary. There cannot be any dispute with the above proposition, it is however, necessary to be considered that both the suits are different in the instant case, whereas RCS No.499 of 2012 is for possession and permanent injunction, RCS No.498 of 2012 is for injunction. Not only that the defendants in both the suits

are different and the portions which are alleged to be encroached by the defendants are also different. Merely because there is measurement done by the Surveyor of the entire property, that by itself cannot be a ground for consolidation of the suits, considering the points of distinction between them stated above. It is also to be noted that RCS No.498 of 2012 is for final arguments whereas RCS No.499 of 2012 is for adducing evidence.

3. In view of what has been stated above, I do not find any reason to interfere in the impugned order.

4. The petition is therefore, dismissed. No costs.

JUDGE

Sarkate