

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

Writ Petition No.1992 of 2022

Shrikrishna Pandurang Thosar Vs Smt. Savita Gajanan Adchule And Another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri B.N. Mohta, Advocate for the Petitioner

Shri S.V. Sohoni, Advocate for the respondent Nos.1 and 2

CORAM : ANIL S. KILOR, J.

DATED : 19th April 2023

1. Heard.

2. In this petition, a challenge is raised to the order below Exh.36 dated 13.12.2021 passed by Civil Judge Junior Division, Balapur in Regular Civil Suit No.68 of 2014, rejecting the application for measurement of the suit field, filed under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure (CPC).

3. The learned trial Court while rejecting the application has recorded the findings in paragraph 19 of the order, which reads thus:

“19. As stated earlier, there is no pleading of plaintiff with regard to either encroachment or boundary dispute or identity of suit property. Further, although, plaintiff produced copy of measurement map prepared by cadestral surveyor, it has not been disputed by defendants in their written statement. Suit is for simplicitor injunction. Statements made by plaintiff in this application are not appearing in his pleadings. Minute perusal of application shows that the main reason for which the plaintiff is seeking measurement

is that by measuring properties of both parties, the matter will be solved amicably or dispute will be clear. However, only for such reason no such commissioner as prayed can be appointed. If defendants had given no objection to this application, then it could have been considered, however, such is not the case. Thus, when there is no pleading of encroachment, when there is no dispute of boundary or identity of properties and when the suit is simplicitor for injunction, acceptance of such prayer as has been made in this application would indirectly mean that it is for finding actual possession and thereby only for collection of evidence. This course is envisaged under Order 26, Rule 9 and section 151 of the Code of Civil Procedure, and thus, not permissible. In view of this, the present application is liable to be rejected. ...”

4. In the present matter, the plaintiff and defendants have filed two separate suits for permanent injunction, and none of them are disputing the measurement or it is not the case of the plaintiff or the defendants that, anyone of them have encroached any land of each other.
5. Thus, in absence of any dispute as regards the measurement or any pleading about the encroachment, I am of the opinion that the findings recorded by the learned trial Court, are just and proper.
6. Accordingly, the writ petition is **dismissed**. However, liberty is granted to the petitioner to move an application afresh, if such occasion arises.

[ANIL S. KILOR, J.]
Digitally signed by NIRANJAN
DOMAJI THAWRE
Signing Date: 21.04.2023
10:56