

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

WRIT PETITION NO.3457 OF 2023

Dr. Viren Shrikumar Papalkar and anr.

..vs..

Durgabai Babulal Shende and ors.

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

Court's or Judge's orders

Shri S.N. Bhattad, Advocate for the petitioners.

Ms. Sapkal, Assistant Government Pleader for respondent nos. 5
 and 6.

CORAM: PRAVIN S. PATIL, J.

DATED : 19/08/2025.

Heard.

2. In the present petition, it is undisputed fact that the present petitioners/original defendant nos.3 and 3A are the owner of plot no.5 in the layout bearing survey no.5/1 situated at Mouza Itawa, Tq. Pusad, District Yavatmal. Present respondent no.2/original plaintiff has encroached the service road of the eastern side and footpath on the northern side by making construction over the suit property. The present respondent nos.1 and 2 on 14.09.2021 filed the suit for declaration that out of land area admeasuring 2.76 HR, the land 2500 sq.ft. is in his possession since 1987 and therefore, he should be declared as an owner of the said land.

3. The present petitioners filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the Plaint by raising the ground that the possession of the respondent nos.1 and 2 being illegal and in the capacity of encroachers, the suit is not tenable and same should be dismissed.

4. The Trial Court after considering the averment in the Plaint, by order dated 11.10.2022 rejected the

application filed by the petitioners.

5. I have gone through the observations and findings recorded by the learned Trial Court while dealing with the aforestated application. The Trial Court has considered the legal position and rightly held that if the person is claiming declaration of ownership on the basis of adverse possession, then he has to first admit that he is an encroacher and with the consent of the owner, he is residing over the said plot for more than 12 years.

6. However, learned Counsel appearing for the petitioner stated that the observations made in the impugned order will affect the suit while deciding the same on its own merits.

7. In the circumstances, though I am fully satisfied with the findings recorded by the learned Trial Court while rejecting the application, however made it clear that any observations made by the learned Trial Court in the impugned order dated 11.10.2022, will not have effect while deciding the suit on its own merits.

8. Hence, with these observations, the Writ Petition stands disposed of accordingly. No order as to costs.

(PRAVIN S. PATIL, J.)