



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 4586 of 2021

[Raju S/o Pundlikrao Gomase ..vs.. Smt. Suman Wd/o Purushottam Patil
and ors.]

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

Court's or Judge's orders

M. R. S. Charpe, Advocate for the petitioner
Ms. A. A. Pande, Advocate for respondent nos. 1, 4 and 5

CORAM : ANIL L. PANSARE J.

DATED : 23-06-2025

Heard.

2. The challenge is to order dated 20-9-2019 passed by 14th Joint Civil Judge Senior Division, Nagpur in Regular Civil Suit No. 641/2007.

3. Learned trial Court appointed Court Commissioner viz. City Survey Officer, Nagpur to measure the land in respect of encroachment of area, if any.

4. In context with above, I have heard learned counsel for the parties. The plaint map is seen. There is no dispute that the respondents – plaintiffs were owners of land admeasuring 3 Acres. It appears that the respondents have sold 2 Acres out of 3 Acres of land to a society, namely, Adiwasi Gruha Nirman Sahakari Sanstha. Said society is not made party to the suit.

5. The encroached portion as shown in map will have to be examined in the light of the property sold by the respondents to the society. In the map attached to plaint, however, instead of showing towards Eastern portion, the land allegedly sold to the society, the respondents have shown the

land, as belonging to them. Thus, the map as annexed with the plaint appears to be incorrectly drawn.

6. Learned counsel for the petitioner submits that the society has carved out lay out and sold various plots. The petitioner has purchased one such plot and had commenced construction when the suit was filed. The same is later completed.

7. Thus, it will have to be ascertained whether the plot sold to the petitioner – original defendant is the one which the society owned in terms of sale deed executed by the respondents in its favour.

8. The location of encroachment will have to be ascertained on the basis of correct map. Unless the correct map is placed on record, even *prima facie* case cannot be made out whether the petitioner's construction is on the land belonging to the respondents. The respondents shall, therefore, place on record before the trial Court the correct map showing the portion belonging to the society and thereupon shall make the alleged portion of encroachment. Mere allegation that petitioner has encroached upon respondents' land will not serve the purpose. For appointment of Commissioner, there has to be some dispute as regards encroachment which should be depicted in the map annexed to the plaint as required in terms of Order VII Rule 3 of the Code of Civil Procedure, 1908.

9. The trial Court shall accordingly examine the entire issue once the correct map is placed on record and shall pass appropriate order thereon.

10. Writ petition is accordingly partly allowed. Order dated 20-9-2019 passed below Exhibit 70 in Regular Civil Suit No. 641/2007 by 14th Joint Civil Judge Senior Division, Nagpur is quashed and set aside. Application, Exhibit 70 is restored to

file for decision afresh in accordance with law and as stated in the body of the order.

11. The respondents shall place on record the correct map within four weeks from today, failing which, the trial Court shall pass appropriate order.

(Anil L. Pansare, J.)

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