



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

Appeal Against Order No.23 of 2023

Surendra s/o Ramprasad Upadhaya
vs.

Smt. Manjulabai wd/o Rameshwar Tidgam and another

*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

Mr. P.A. Dharaskar, Advocate for the Appellant.
Ms. Vidya Umale, Advocate for the Respondents.

CORAM : ROHIT W. JOSHI, J.
DATE : 7th NOVEMBER, 2025.

The present respondents-plaintiffs have filed a suit for mandatory injunction for delivery of possession of encroached portion over their agricultural land against the present appellant-defendant. The suit was dismissed on the ground of limitation. The plaintiffs preferred appeal, which came to be partly allowed by the learned First Appellate Court. The learned First Appellate Court found that the suit was filed within limitation. However, on considering the evidence of the Cadastral Surveyor, the learned First Appellate Court was of the opinion that the measurement was not carried in accordance with law and, therefore, the learned First Appellate Court has remanded the matter to the learned Trial Court with direction to appoint a qualified Surveyor as Court Commissioner for measurement of the land owned by the plaintiffs and the defendant and to decide the suit afresh.

02. It will be pertinent to mention that although the defendant has raised objection to the report submitted by the Court Commissioner, the plaintiffs had accepted the same.

03. Aggrieved by the said order of remand, the defendant has preferred the present appeal against order. The only contention raised by the learned Advocate for the appellant/defendant is that the suit was barred by limitation and, therefore, the learned First Appellate Court ought not to have remanded the matter to the learned Trial Court for fresh adjudication. The learned First Appellate Court has considered the evidence on record and has found that the suit was filed within the period of limitation. The learned First Appellate Court referred to the reply notice at Exh.54 issued by the defendant in which it was specifically contended that barbed wire fencing was erected in the month of June, 2009. The learned First Appellate Court has also referred to admission by the defendant that measurement of the suit property was carried out at the behest of the plaintiffs after the barbed wire fencing was erected in the month of June, 2009. The learned First Appellate Court has, therefore, held that the suit, which was filed in September, 2010, is filed within limitation.

04. The learned Advocate for the appellant drawn attention to the plaint, wherein an averment is made that cause of action arose in the month of June, 2009, when the fencing was erected by the defendant. He then draws attention to the cross-examination of the plaintiffs and points out that the plaintiffs had admitted that the fencing was installed 4½ years before. This, according to him, is sufficient to establish that the suit was filed beyond a period of three years, which according to him, is the limitation applicable for removal of encroachment.

05. The statement of witness in the cross-examination that the fencing was erected 4½ years before, relates to the date on which the cross-examination was recorded. The statement cannot be interpreted to mean that fencing was erected 4½ years prior to filing of the suit.

06. Apart from the aforesaid, no other submission is made to demonstrate that the suit is barred by limitation.

07. The interpretation of evidence as offered is clearly unsustainable and, therefore, the contention that the suit is barred by limitation is liable to be rejected and is rejected accordingly.

08. The appeal against order, therefore, stands dismissed with no order as to costs.

JUDGE

**sandesh*