



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

WRIT PETITION NO. 6702/2024

(RADHESHYAM MANGALCHAND AGRAWAL **VERSUS** RAJENDRA NARAYANPRASAD
AGRAWAL & OTHERS)

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

Court's or Judge's order

Shri O.W. Gupta, counsel for the petitioner.
Shri VR. Borkar, counsel for the respondent nos.1 to 4.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : SEPTEMBER 08, 2025

FINAL ORDER :

Heard Shri O.W. Gupta, learned counsel for the petitioner and Shri VR. Borkar, learned counsel for the respondent nos.1 to 4. None appears for the respondent no.5, though served.

2. By this writ petition, the petitioner has challenged the order dated 28.08.2024 passed by the Court of 4th Joint Civil Judge (Junior Division), Gondia on Exhibit 408 in Regular Civil Suit No.40 of 2012 by which the plaintiffs' application seeking permission to examine the Deputy Superintendent of Land Records, has been allowed.

3. The controversy arises out of an order passed in a suit filed by the respondent nos.1 to 4-original plaintiffs seeking declaration and permanent injunction with respect to various plots stated in the plaint. The plaintiffs had alleged that they are the owners and are in possession of the suit plots and the petitioner-original defendant no.1 has tried to disturb the possession of the

respondent nos.1 to 4 over plot no.679. During the pendency of the suit, the plaintiffs moved an application Exhibit 188 on 05.09.2008 for appointment of Taluka Inspector of Land Records, Gondia as Court Commissioner for measurement and demarcation of boundaries of plot no.679. By an order dated 09.09.2008, the application was allowed and the Taluka Inspector of Land Records, Gondia was appointed as Court Commissioner. This order was challenged *vide* **Writ Petition No.158 of 2008** which came to be disposed of by an order dated 24.07.2009 thereby directing the trial Court to cause measurement of entire field survey No.458 including plot no.679 in order to find out whether plot no.679 is part of entire field survey no.458. On the issue of entitlement of the plaintiffs to cross-examine the Commissioner, the parties had second round of litigation *vide* **Writ Petition No.2801 of 2010**, which was a petition filed by Narayanprasad S. Agrawal-original plaintiff no.1. Having regard to the controversy involved in the matter, the writ petition was disposed of by an order dated 29.07.2010 observing therein that the plaintiffs were entitled to substantiate their objection to the Commissioner's report and were accordingly entitled for an opportunity to examine the Commissioner and simultaneously it was observed that the defendants were entitled to conduct the cross-examination, if required.

4. In this background, instead of examining the Taluka Inspector of Land Records, Gondia, the plaintiffs submitted another application praying for appointment of Nimtandar, Gondia as Commissioner for carrying out measurement of plot no.679. However, the same came to be rejected by an order dated 30.12.2013.

5. The plaintiffs therefore submitted application at Exhibit 380 on 23.01.2014 for permission to examine the Surveyor in accordance with the order passed in Writ Petition No.2801 of 2010. This application came to be rejected by an order dated 24.01.2014 on the ground that it was filed after four years. A review application challenging this order was filed which also came to be rejected by an order dated 28.10.2014. In view of rejection of the application at Exhibit 380, the plaintiffs filed another application at Exhibit 408 for permission to examine the Surveyor by recalling the order dated 24.01.2014 passed on the application at Exhibit 380. This application was allowed and in this background, the petitioner who is original defendant no.1 filed a petition being **Writ Petition No.4955 of 2016** which came to be disposed of by an order dated 19.08.2019 directing the trial Court to reconsider and decide the application at Exhibit 408 in the light of order passed earlier in the said suit.

6. In this backdrop, the application for examining the Deputy Superintendent of Land Records, Gondia as witness came up for consideration before the trial Court. By an order dated 28.08.2024, the said application came to be allowed subject to payment of costs

of Rs.10,000/- to be paid by the plaintiffs to the defendants and the order dated 24.01.2014 came to be recalled. The petitioner-original defendant no.1 has challenged this order by way of the instant writ petition.

7. The learned counsel for the petitioner has vehemently submitted that the impugned order in effect allows the plaintiffs to examine the Commissioner after lapse of about ten years and since the plaintiffs have failed to avail the opportunity granted by this Court earlier, the examination of the Commissioner would amount to collection of evidence. He also submitted that the impugned order is in the nature of condoning the delay of fourteen years without any justifiable reason.

8. Per contra, the learned counsel for the respondent nos.1 to 4 has strongly opposed the writ petition. He submitted that the application for examining the Surveyor as witness was infact filed in the year 2014 itself, that too in accordance with the order passed by this Court in Writ Petition No.2801 of 2010. As such, he submits that there is no delay of ten or fourteen years, as alleged. He has further submitted that in view of the nature of suit being a boundary dispute, examination of the Surveyor is necessary for deciding the real controversy involved in the suit. He has submitted that since both the parties are entitled to examine or cross-examine the Surveyor, no prejudice would be caused to the petitioner and on this count, he has prayed for dismissal of the writ petition.

9. While considering the rival contentions, it has to be noted that by an order dated 29.07.2010 passed by this Court in Writ Petition no.2801 of 2010, directions were issued to allow the plaintiffs to examine the Surveyor. Although the application for examining the Surveyor was filed after a period of four years, it is crucial to note that this Court had found the examination of the Surveyor to be necessary for deciding the controversy involved in the suit. It has to be noted that the suit is for declaration and permanent injunction and since the controversy is about a boundary dispute, related to the alleged encroachment on the suit property, the measurement of the suit property through Surveyor was found necessary. In view of above circumstances, allowing the plaintiffs to examine the Surveyor as witness will not cause any prejudice to the defendants.

10. A perusal of the impugned order shows that the trial Court has given due consideration to the orders passed by it in the civil suit and the orders passed by this Court in the writ petitions filed by the parties. Having regard to the controversy involved, the trial Court has categorically observed that if an opportunity is given to the plaintiffs to examine the Surveyor, certainly an opportunity would be there for the defendants to cross-examine him. After considering the fact that there is considerable delay on the part of the plaintiffs for submitting the application to examine the Surveyor, the trial Court has allowed the application subject to payment of costs of Rs.10,000/- to be paid to the defendants. After

considering the purport of the orders passed by this Court, the trial Court has passed the impugned order which is well reasoned.

11. In the light of above mentioned factual and legal aspects, no case is made out for seeking indulgence of this Court with the impugned order under Article 227 of the Constitution of India. The writ petition accordingly stands dismissed. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)