



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

Writ Petition NO.73/2023

Vinitkumar Pradipkumar Kejdiwal Vs. Tarabai Natthu Kohachade and others

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

Court's or Judge's order

Mr.N.R.Bhishikar, Advocate for petitioner.
None for the respondents.

CORAM : ROHIT W.JOSHI, J.

DATE : 01.12.2025

1. The respondents have not entered appearance despite being served with notice for final hearing and vide order dated 09.01.2023. **Rule.** Rule made returnable forthwith.
2. The petitioner has filed Special Civil Suit No. 13/2008 for removal of encroachment. It is the case of the plaintiff that he is the owner of land bearing Survey no.509, admeasuring 0.24 H.R. situated in Desaiganj. According to the plaintiff, the defendants have made encroachment over the aforesaid land to the extent of 2486 sq.ft. The defendants have entered appearance in the matter and have filed the counter claim stating that they are in open hostile possession of 2000 sq. ft. of land in the aforesaid survey number. In these set of facts, the plaintiff/petitioner had moved an application for appointment of Court Commissioner for measurement of the encroachment. The said application is rejected by the learned Trial Court vide its order dated 7.7.2022 on the ground that the appointment of Court Commissioner will result in collection of evidence which is not permissible.

3. In the considered opinion of this court, although the fact of possession is admitted by the defendants, the extent of land in possession of the defendant is a issue which will have to be decided by the learned Trial Court. In order to determine the extent of encroachment or possession, it is desirable that the property is measured by some competent Surveyor from Government Office.

4. In view of above, writ petition is allowed in the following terms:

ORDER

(i) The order dated 17.10.2022 passed by Joint Civil Judge Senior Division, Gadchiroli below Exhibit 68 in Special Civil Suit No.13/2018 is quashed and set aside;

(ii) The said application at Exhibit 58 is allowed.

(ROHIT W. JOSHI, J.)