

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

WRIT PETITION NO. 778 OF 2014

Shantabai wd/o Suryabhan Ninghot Vs. Nagorao Laxmanrao Akhare thr LR's. & Ors.

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

Court's or Judge's Order

Smt. S. W. Deshpande Adv for petitioner.

CORAM: A. S. CHANDURKAR J.

DATED: 09 JANUARY, 2015.

Challenge in the present writ petition is to the order dated 09.01.2014 passed below Ex. 14 rejecting the application for amendment moved by the original plaintiff.

The petitioner-plaintiff had filed suit for declaration of her ownership along with prayer for permanent injunction. The trial Court rejected the application for temporary injunction on 26.06.2004 on the ground that the defendant was in possession. The trial Court thereafter dismissed the suit on 22.12.2006 on the ground that there was no prayer for delivery of possession though the plaintiff had proved her ownership. On 12.10.2010 the petitioner moved an

application for amendment of the plaint and sought to add prayer for possession of the suit field. The first appellate Court rejected said application on the ground that the plaintiff was not diligent in moving the same.

Smt. S. W. Deshpande, the learned counsel appearing for the petitioner submitted that though the plaintiff was dispossessed in the year 2004 the trial was under progress. The plaint was not amended at that stage. Thereafter the appeal was filed challenging aforesaid decree passed by the trial Court. The appeal was thereafter pending for preparation of paper book. Hence application for amendment was moved in the year 2010. She therefore submitted that application ought to have been allowed by the appellate Court.

Considering the fact that the suit came to be dismissed on 22.12.2006 holding that there was no prayer for possession, there is no explanation as to why no steps for amending the plaint were taken till 12.10.2010. In absence of any such steps being taken, it cannot be said that petitioner had been diligent in seeking the amendment. Hence, no fault

can be found with the order passed by the first appellate Court. There is no ground made out to interfere in the writ petition. Writ Petition stands dismissed with no orders to costs.

JUDGE

svk