

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

LETTERS PATENT APPEAL NO. 232 OF 2013 IN
WRIT PETITION NO. 6194 OF 2012

(Taranjeetsingh s/o Iqbalsingh Bagga vs. Iqbalsingh s/o Jodhasingh Bagga (dead thr. LRs) & Ors)

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

Court's or Judge's orders

**CORAM : B.P. DHARMADHIKARI &
S.B. SHUKRE, JJ.
MARCH 24, 2015.**

Heard Shri Saboo, learned counsel for the petitioner and Shri Mordia, learned counsel for respondents No. 3, 5 & 7.

2. In a Special Civil Suit instituted in the year 1994 by the appellant for partition, separate possession and other consequential reliefs after the stay was vacated on 03.01.2012, on 17.01.2012 he sought amendment to point out 2010 transfers of alleged HUF properties by the defendants. The prayer was to permit the transferees to be joined as party defendants. Similarly, two purchases of immovable properties were also pointed out urging that as immovable properties were procured from the funds of joint Hindu Family, same also needed to be partitioned.

3. The learned trial Court found that the amendment was moved belatedly and there was no explanation. As the case was closed for arguments of

parties, the amendment was rejected.

4. The matter came up before the learned Single Judge and the learned Single Judge after hearing the learned counsel for the appellant found such amendment merely to point out subsequent transfers and to join transferees was not necessary for effective adjudication of the suit.

5. Before this Court, Shri Saboo, learned counsel submits that not only transfers to third parties were being pointed out but acquisition of two immovable properties through joint family fund was also being pressed into service and, therefore, amendment ought to have been allowed. He submits that it was necessary for the appellant – plaintiff to demonstrate that acquisition was out of funds of joint family and, therefore, properties acquired constituted the joint Hindu family properties and for that, recording of evidence was necessary.

6. Shri Mordia, learned counsel submits that insofar as transfer to strangers is concerned, the doctrine of lis pendence could have been applied. However, he does not seriously dispute need of recording evidence as according to him the properties acquired are not from the Joint Hindu Family funds and do not form part of joint Hindu Family property. He also invited our attention to the fact that LPA is dismissed as against Respondent No. 6.

7. Respondent No. 6 is one of the purchasers, who is alleged to have purchased the property of

family from the defendants. In this situation, it is apparent that amendment cannot be allowed behind his back.

8. Shri Saboo, learned counsel has made a request for adjournment so as to enable him to take appropriate steps insofar as Respondent No. 6 is concerned. Shri Mordia, learned counsel has objected to it.

9. We find that the appeal is dismissed against Respondent No. 6 on 24.01.2014 i.e. more than one year back. In this situation, taking overall view of the matter, we grant liberty to the appellant – plaintiff to challenge the order rejecting prayer for amendment after adjudication of suit, if occasion therefor arises. With said liberty, we dispose of the Letters Patent Appeal. No order as to costs.

JUDGE

JUDGE

*GS.