

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

WRIT PETITION NO.2258/2015

Kanhaiyalal Harsyamal Sharma

..Versus..

Sunilkumar s/o Banwarilal Sharma and another

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

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 11.8.2015

Heard Shri R.M. Sharma, learned advocate for the petitioner/plaintiff and Ms. Ankita Sarkar, learned advocate for the respondent no.1. None appears for the respondent no.2.

This Court by the order dated 20th April, 2015 had issued notice for final disposal hence the matter is being taken up for final disposal.

The petitioner/plaintiff has filed this petition challenging the order passed by the trial Court rejecting the application filed by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure. The application is rejected mainly on the ground that earlier also the petitioner/plaintiff had filed three

applications (Exh. No.33, Exh. No.56 and Exh. No.75) seeking permission to amend the plaint which were allowed by the Court. The other ground on which the application is rejected is that the present application has been filed only to delay the disposal of the civil suit. Learned trial Judge has further recorded that the proposed amendment changes the nature of claim made by the plaintiff.

The first two grounds recorded by learned trial Judge are not relevant in the facts of the present case. It is undisputed that the issues are yet to be framed and, therefore, the filing of the three applications earlier are not *germane* while considering the application (Exh. No.149) filed by the plaintiff. It is settled law that the proposed amendment has to be liberally granted unless it falls in the category of prohibited amendments.

As far as the reason given by learned trial Judge that the proposed amendment changes the nature of the claim made by the petitioner/plaintiff is concerned, I find that it is not sustainable. The petitioner/plaintiff has filed civil suit praying for decree for declaration that the will deed dated 20th May,

1996 executed in favour of the defendant is false and bogus and it be cancelled. By the proposed amendment sought by the application (Exh. No.149) the petitioner is making alternate claim which is also based on the will deed dated 20th May, 1996. In my view, the proposed amendment will facilitate the proper disposal of the civil suit and will enable the Court to adjudicate the issues raised by the parties. However, considering the fact that the petitioner/plaintiff has not been vigilant in pursuing the matter, the other side can be compensated by awarding costs. Hence the following order:

- (i) The impugned order is set aside.
- (ii) The application (Exh. 149) filed by the petitioner/plaintiff is allowed.
- (iii) The petitioner/plaintiff shall effect the amendment within two weeks, failing which the permission granted to amend the plaint shall stand recalled.
- (iv) The petitioner shall pay costs of Rs.10,000/- (Rs. Ten Thousand Only) to the respondent no.1 and produce the receipt on record of the trial Court within one month. In default on the part of the petitioner/plaintiff to pay costs within

stipulated time, this order shall stand recalled and the order passed by the trial Court shall stand revived.

(v) Rule made absolute in the above terms.

JUDGE

Tambaskar.