

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

WRIT PETITION NO.3810 OF 2013

(Maojibhai s/o Bhimji Patel ..vs.. Anita w/o Riteshrao Gavali and others)

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.

DATED : 07-07-2015

Heard Shri M.R. Joharapurkar, learned Advocate for the petitioner and Shri A.V. Khare, learned Advocate for the respondent Nos.1 to 5 and 8.

2. The petitioner/defendant has challenged the order passed by the trial Court, allowing the application (Exhibit 25) filed by the plaintiffs seeking permission to amend the plaint. The contention of the petitioner/defendant is that the trial Court has committed an error of jurisdiction by allowing the plaintiffs to amend the plaint after the commencement of the trial contrary to the mandate of the proviso below Rule 17 of Order VI of the Code of Civil Procedure.

3. Shri M.R. Joharapurkar, learned Advocate for the petitioner has made alternate submission that if the amendment proposed by the plaintiffs has to be allowed, then the pleadings can be considered to be placed on the record from the date on which the application praying for permission to amend the plaint is allowed. It cannot

relegate back to the filing of the civil suit. It is submitted that the petitioner/defendant has raised the ground of limitation and if the proposed amendment is permitted to relegate back to the date of filing of the civil suit, it would seriously prejudiced the defence of the petitioner/defendant.

The learned Advocate for the petitioner has relied on the judgment given by the Hon'ble Supreme Court in the case of *J. Samuel and others vs. Gattu Mahesh and others* reported in (2012) 2 SCC 300 and it is submitted that the reason given by the plaintiffs that the sentence which is now sought to be incorporated remained to be incorporated at the time of filing of the plaint because of typographical error, is unjustified. Relying on the paragraph Nos.20 and 21 of the above referred judgment, it is submitted that it cannot be said that the plaintiffs have been diligent in the matter.

4. Shri A.V. Khare, learned Advocate for the respondent Nos.1 to 5 and 8 has pointed out from the copy of the plaint that the plaintiffs filed the civil suit praying for decree for declaration and cancellation of sale-deed dated 23-01-2006 and the suit has been valued at Rs.20,11,000/- and court fee has been paid accordingly. It is pointed out from paragraph No.10 of the plaint and the prayer clause (iii) of the civil suit that the challenge to the sale-deed dated 23-01-2006 had been there from the time of filing of the civil suit and the

plaintiff is seeking to add sentence “which be declared as null and void *ab initio*” at the end of sub-para (3) of para No. 10 and at the end of prayer clause No. (iii) of the plaint.

5. The unamended relevant portion of sub-para (3) of para No.10 of the plaint reads as follows :

“10(3). Further declare that prior to execution of sale deed defendants have not complied with due procedure and by playing fraud with all the plaintiffs and coparceners thereof without obtaining their consent and executed the alleged sale deed dated 23-1-2006 vide document No.319/06 executed before the Sub-registrar No.6, Nagpur by defendant No.5 under influence of liquor in favour of defendant Nos.1 to 4 unlawfully.”

The plaintiffs are seeking to add the sentence “which be declared as null and void *ab initio*” at the end of sub-para (3) of para No.10 of the plaint.

The unamended prayer clause (iii) of the suit reads as follows :

“(iii). Further declare that prior to execution of sale deed defendants have not complied with due procedure and by playing fraud with all the plaintiffs and coparceners thereof without obtaining their consent and executed the alleged sale deed dated 23-1-2006 vide document No.319/06 executed before the Sub-Registrar No.6, Nagpur by defendant No.5 under influence

of liquor in favour of defendant Nos.1 to 4 unlawfully.”

The plaintiffs are seeking to add the sentence “which be declared as null and void *ab initio*” at the end of this prayer clause.

It cannot be said that the plaintiffs are seeking to add any new plea. The learned trial Judge has properly dealt with the matter. The judgment relied upon by the learned Advocate for the petitioner/defendant does not assist the petitioner/defendant as in the facts of the present case, it cannot be said that the plaintiffs are seeking to add any new plea which cannot be permitted after the commencement of the trial.

6. I do not find any reason to interfere with the impugned order. The writ petition is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE