

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

WRIT PETITION NO. 197 OF 2015

Meerabai Krishnarao Gotekar & Ano. Vs. Pramod Ganpatrao Patil & Ano.

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

Court's or Judge's Order

Shri M. P. Dhruv Adv for petitioners.
Shri S. V. Sohoni Adv for respondents.

CORAM: A.S.CHANDURKAR J.

DATED: 02nd DECEMBER, 2015.

Challenge in the present writ petition is to the order passed by the trial Court allowing the application for amendment moved by the plaintiff.

It is submitted on behalf of the petitioners that the suit as initially filed sought declaration against defendant no.2 that he should not erect any construction so as to prevent the plaintiff from approaching his house. Said relief was sought only against defendant no.2 though present petitioners who are defendant nos. 1 and 3 were already before the trial Court. It is submitted that by the proposed amendment relief which was not originally prayed for against the defendant nos. 1 and 3 is now being prayed. Such course is not permissible and therefore the trial Court ought not to have allowed the application for amendment.

On behalf of respondent no.1 it is submitted that in the plaint all relevant pleadings were made and it was the case of the plaintiffs that except the plot of defendants there was no alternative way to approach the main road. It is the submission that easement was claimed as of necessity and the relief as sought against defendant nos. 1 and 3 does not change the nature of the suit.

Having heard the respective counsel I do not find that there is any case to interfere in writ jurisdiction. The trial of the suit is yet to commence and relief as sought against defendant nos. 1 and 3 is not stated to be barred by limitation. The pleadings on the basis of which such relief is now being sought was pleaded in para 7 of the plaint. Moreover, by prayer clause (iii) in the plaint relief against all defendants not to create any obstruction is already sought. There is therefore no error is committed by the trial Court in allowing the amendment application. Hence, there is no reason to interfere in writ jurisdiction. The writ petition stands dismissed. No costs.

JUDGE