

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

WRIT PETITION NO. 3611 OF 2015

Sadakanwar Tarachandji Rathi & Ors. Vs. Chiranjilal Jaikisanji Rathi

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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 A. S. Dhore Adv for petitioners.
Shri A. V. Bhide Adv for respondents.

CORAM: A. S. CHANDURKAR J.

DATED: 24th JUNE, 2016.

Heard. The challenge in the present writ petition is to the order dated 20.02.2015 passed by the trial Court thereby allowing the application for amendment moved by the plaintiff and permitting addition of a party as defendant no.6.

The respondent no.1 is the original plaintiff who has filed suit for specific performance of agreement for sale of immovable property dated 22.06.2010. This agreement was entered into by the plaintiff with the defendant nos. 1 to 5. During pendency of this suit the plaintiff moved an application below Ex. 8 stating therein that one Fakirchand Rathi was having undivided share in the suit property and hence his presence was necessary for proper adjudication of the suit. The defendant nos. 1 to 4 filed the reply stating that the proposed defendant was not a party to the agreement and hence a stranger could not be added as a defendant in the suit for specific

performance. A further plea was taken that the plaintiff could not have prayed for partition of the suit property. By the impugned order the trial court allowed the application for amendment by relying upon the judgment of the Hon'ble Supreme Court in *P. C. Varghese Vs. Devaki Amma Balambika Devi and others AIR 2006 Supreme Court 145*.

Shri A. S. Dhore, the learned counsel for the petitioners submitted that trial Court was not justified in allowing the application for amendment. He reiterated the same submissions that were made in the reply that was filed before the trial Court to oppose the prayer for amendment.

Shri A. V. Bhide, the learned counsel for the respondent no.1 supported the impugned order. According to him as the respondent no.2 had undivided share in the said property his presence was necessary.

Having heard the respective counsel and having perused the impugned order, I do not find that trial Court committed any error in allowing the application for amendment. The trial Court while doing so relied upon the judgment of the Hon'ble Supreme Court in *P. C. Varghese* (supra) wherein it has been held that such relief of partition of the suit property could be sought in the suit for specific performance. In view of aforesaid there is no reason to interfere in writ jurisdiction. The writ petition is therefore dismissed. No costs.

JUDGE

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