

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

WRIT PETITION NO.6920 OF 2016

(KISHOR RAMKRUSHNA BAPU KHEDIKAR & ANR....VS.. SAU. JYOTI SUBHASHRAO MOTDHARE & 6
OTH.)

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

Court's or Judge's orders

Shri N.R.Saboo, Advocate for Petitioners.
Shri D.V.Chauhan, Advocate a/w. Shri H.A.Khedikar,
Advocate for Respondent No.2.

CORAM : Z.A.HAQ, J.

DATED : MARCH 02, 2017.

The petitioners / original defendant Nos. 3 and 4 have challenged the order passed by the District Court rejecting the application (Exh.22) filed by them under Order 6 Rule 17 of the Code of Civil Procedure.

The respondent No.1/ plaintiff filed civil suit praying for decree for partition, separate possession and other reliefs. The suit is partly decreed. Being dissatisfied with the judgment and decree passed by the trial Court the plaintiff has filed appeal which is pending before the District Court. In this appeal the defendant Nos. 3 and 4 had filed application (Exh.22) seeking permission to amend the written statement. By the proposed amendment, the defendant Nos. 3 and 4 sought to incorporate the plea that 1/3 share in house bearing GP No.191/4 (New Survey No.55) belongs to the defendant No.3, it is not an ancestral property of deceased Ramkrushna and hence, it is required to be deleted from the schedule of property given along with the plaint. This application is rejected by the learned District Judge by the impugned order.

The pleadings which the defendant Nos. 3 and 4 seek to incorporate in the written statement is in relation to the facts which were within their knowledge when the written statement was filed. The defendant Nos. 3 and 4 have not given any explanation for not incorporating the pleadings which they want to now bring on record by amendment, earlier. Though some of the observations of the learned District Judge while rejecting the application (Exh.22) may not be correct, the conclusions of the learned District Judge cannot be faulted with. There is no error of jurisdiction. I see no reason to interfere with the impugned order.

The petition is **dismissed**. In the circumstances, the parties to bear their own costs.

CAW NO. 520/2017.

In view of disposal of the petition, the application seeking permission to file additional documents does not survive. Hence, it is **disposed**.

JUDGE

Rraut..