

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

Writ Petition No. 5591/2017

(Vinod S/o Kisanrao Damaye Vs. Rahul S/o Ashokrao Gharfalkar & ors.)

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

Court's or Judge's orders.

Shri A. J. Mirza, Advocate for petitioner.
Shri A. P. Kalmegh, Advocate for respondent Nos. 1 and 2.

CORAM : A. S. CHANDURKAR, J.
DATE : 09.04.2018.

The petitioner who is the original plaintiff is aggrieved by the order passed by the Trial Court below Exhibit-94 refusing permission to amend the plaint.

2. In the suit filed by the petitioner on 18.02.2006, it has been prayed that the sale-deed executed by the defendant Nos. 3 to 5 on 08.08.2005 in favour of the defendant Nos. 1 and 2 be declared as not binding on the plaintiff. In that suit, the plaintiff sought to amend the plaint and to raise the plea that on 21.08.2004, the defendant Nos. 3 to 5 had agreed to sell the suit property to the plaintiff. Further pleading is that amount of Rs. 25,000/- was already paid to the defendant Nos. 3 to 5. The trial Court by the impugned order rejected that application.

3. The learned counsel appearing for the petitioner submitted that as the trial was yet to commence, the amendment as prayed for ought to have been granted. No prejudice would

have been caused as the defendants could be compensated by imposing costs.

4. The learned counsel appearing for the respondent Nos. 1 and 2 opposed the aforesaid submission. It was submitted that merely by stating the said prayer was not made through oversight can not be a justification for seeking amendment at this late stage. Moreover, the relief as sought was also belated and barred by limitation.

5. After hearing the learned counsel appearing for the parties, I do not find that the trial Court committed any error in rejecting the application for amendment of the suit which was filed in the year 2006. The plaint was sought to be amended in August 2013 in respect of the alleged agreement dated 21.08.2004. In the light of proviso to Order VI Rule 17 of CPC, there is absence of due diligence. The ground that the defendant can be compensated by itself is not sufficient to allow the amendment. There is no jurisdictional error committed warranting interference by this Court. The writ petition is therefore dismissed with no order as to costs.

JUDGE