

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

WRIT PETITION NO.809 OF 2017

Rukhmabai Raghoba Kuyate
-vs-
Mukunda @ Mukunda Naguji Channe and ors.

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

Court's or Judge's Orders.

Shri H. N. Potbhare, Advocate for petitioner.
Shri A. A. Dhawas, Advocate for respondent nos.1 to 4.

CORAM : A.S.CHANDURKAR, J.
DATE : March 20, 2019

The petitioner is the original plaintiff is aggrieved by the order passed below Exhibit-135 rejecting the application filed by her for amendment of the plaint.

The plaintiff had filed suit for partition and separate possession pleading therein that the suit property was the joint property of the plaintiff and defendant Nos.1 to 4. It is further pleaded that despite being a co-owner of that property, the plaintiff has been excluded from claiming any right in the said joint property by the defendants. The parties thereafter led evidence in the light of issues that were framed below Exhibit-35. After the parties were heard on merits, the trial Court on 29/08/2016 recasted the issues. Thereafter the plaintiff moved the application below Exhibit-135 seeking an amendment in the plaint. The

amendment sought was to replace the words “ joint ownership” by deleting the word “ancestral”. The trial Court has rejected that application on the ground that the same was moved after commencement of the trial.

Shri H. N. Potbhare, learned counsel for the petitioner submitted that in the plaint there was a typographical error as the words “ joint ownership” were wrongly written instead of word “ancestral”. According to him said amendment ought to have been allowed as the nature of the suit would not have changed. Same would have enabled the Court to decide the same in the light of the issues that had been recasted. Infact after hearing the parties the trial Court had recasted the issues on 29/08/2016 and therefore the amendment ought to have been allowed.

Shri A. A. Dhawas, learned counsel for the respondent Nos.1 to 4 supported the impugned order. According to him there was absence of due diligence on the part of the plaintiff in seeking the amendment. He referred to the pleadings as well as the cross-examination of the defendant to indicate various suggestions given to the defendant in the cross-examination. As the plaintiff proceeded with the case on the premise that the property was joint property, the amendment did not deserve to be allowed.

Heard the learned counsel and perused the pleadings as well

as other documents on record. In the plaint it is the case pleaded that the property in question was the joint property of the plaintiff as well as defendant Nos.1 to 4. These pleadings are made in paragraphs 2 to 5 of the plaint. Similar statements are made in the affidavit filed on behalf of the plaintiff. By virtue of the proposed amendment, the words “ joint ownership” are sought to be replaced by the word “ancestral”. The only reason stated is it being a typographical mistake. The trial Court has found that in the light of the entire pleadings of the parties and the evidence led by them it could not be said that there was a typographical mistake while preparing the plaint. Moreover, there is absence of due diligence on the part of the plaintiff. Merely by stating that there was a typographical mistake the plaintiff cannot be permitted to amend the pleadings. It is therefore found that the trial Court did not commit any error when it rejected the application that was filed below Exhibit-135. By directing the trial Court to decide the suit on its own merits, the writ petition stands dismissed. No costs.

JUDGE