

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

WRIT PETITION NO. 742/2019

Suhas S/o Balwantrao Raipurkar
 ..VS..
 Shashank S/o Dattatray Raipurkar & anr.

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

Court's or Judge's orders

 Shri R. Joshi, Advocate for the petitioner

CORAM : Z.A.HAQ, J.
DATED : 04/02/2019

Heard.

The original defendant no. 1 has challenged the order passed by the learned trial Judge by which the application (Exh. 239) filed by the respondent no. 1 – plaintiff under Order 6 Rule 17 of the Code of Civil Procedure is allowed and the plaintiff is permitted to amend the plaint.

According to the defendant no. 1, the plaintiff is seeking to change the nature of the claim and the reliefs sought by the proposed amendment are barred by limitation. The plaintiff had prayed for decree for permanent injunction restraining the defendants from interfering with possession over the suit property. The plaintiff had also prayed for declaration that the sale-deed executed by the defendant no. 1 in favour of the defendant no. 2 on 16/05/2013 is null and void and it be cancelled. By the proposed amendment, the plaintiff seeks to incorporate the pleading that the suit property is the property of the Joint Hindu Family and a

consequential prayer is sought to be incorporated seeking declaration that the suit property is the property of the Joint Hindu Family. Looking to the nature of the controversy, it cannot be said that the plaintiff is seeking to change the nature of the claim/suit.

As far as the point of limitation is concerned, it is well settled that if the amendment is allowed, it will be on record from the date on which the application seeking permission to amend the plaint is filed. Examined from this angle, it would not be appropriate to deprive the plaintiff of incorporating the proposed amendment. The defendants will get right to substantiate their contention that the claim of the plaintiff, as made by the proposed amendment, is barred by limitation.

In view of the above, I see no reason to interfere with the exercise of discretion by the learned trial Judge which I find is based on the sound principles of law and rightly applied in the facts of the case.

The writ petition is **dismissed**. No costs.

JUDGE

Ansari