

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

WRIT PETITION NO.1350 OF 2017

(SAU. BABY BASHAKAR DAROKAR...VS.. RAMESH MADHUKARRAO AMBADKAR & 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.A.Gawande, Advocate for Petitioners.
Shri J.J.Chandurkar, Advocate for Respondent Nos. 1 and 2.

CORAM : Z.A.HAQ, J.

DATED : FEBRUARY 05, 2019.

Heard.

The original defendant Nos.1 and 2 have challenged the order passed by the trial Court by which the application (Exh.55) filed by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure is allowed, and the plaintiff is permitted to amend the plaint. The impugned order is challenged on the ground that the plaintiff cannot be permitted to raise a challenge to the 'Vyavasthapatra' dated 18th August 1986 as in the earlier pleadings, the plaintiff relied only on Will alleged to have been executed by Shri Ganpat Ganaji Sune on 19th November 1986, but now he is doubting the genuineness of the Will.

The learned Advocate for the respondent No.1/ plaintiff has pointed out that the plaint is earlier amended and it is pleaded in paragraph No.6A that the Will is a suspicious document, and is illegal and executed by Shri Ganpat Ganaji Sune without any right. It is pointed out that the defendants have not challenged the order passed by the

trial Court permitting the plaintiff to incorporate paragraph No.6A to challenge the legality of the Will, and in these facts, the challenge as raised now cannot be accepted. It is further pointed out that by the application filed on 19th June 2014 the defendant No.2 has amended his written statement and has brought on record the 'Vyavasthapatra', dated 18th August 1986. According to the plaintiff, after this application filed on 19th June 2014 came to be allowed, it became necessary for the plaintiff to amend the plaint.

The dispute is about succession to the property owned by the predecessor of the plaintiff and defendant Nos. 1 and 2. Considering the nature of the dispute and the fact that the issues are not yet framed, in my view, the learned trial Judge has not committed any illegality by allowing the plaintiff to amend the plaint. It cannot be said that the learned trial Judge has exceeded his jurisdiction. Hence, I see no reason to interfere with the impugned order.

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

JUDGE