

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

WRIT PETITION NO. 2809/2019

Lalsingh D. Solanke

..VS..

Bhagwan A. Solankhe & ors.

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

Court's or Judge's orders

Shri O.R. Deshpande, Advocate for the petitioner
Shri K.L. Dharmadhikari, AGP for the respondent/State
Shri S.U. Bhuyar, Advocate for the respondent nos. 1 to 3

CORAM : Z.A.HAQ, J.

DATED : 09/09/2019

Heard.

The petitioner – original plaintiff has filed civil suit against the respondents – defendants praying for decree for perpetual injunction restraining the defendants from disturbing possession of the plaintiff over the suit property. The plaintiff has further prayed for decree for mandatory injunction against the respondent no. 4 – State of Maharashtra and respondent no. 5 – Panchayat Samiti, Chikli to prepare the record of the suit property with entries showing factual position. The trial progressed, and affidavit in lieu of examination-in-chief of the plaintiff came to be filed, and examination-in-chief came to be conducted, after seeking several adjournments to cross-examine the plaintiff, the defendants filed an application (Exh. 107) under Order 6 Rule 17 of the Code of Civil Procedure seeking permission to amend the written statement. This application is allowed by the impugned order.

The impugned order is assailed on various grounds, mainly on the ground that the trial Court has allowed the application (Exh. 107) overlooking the fact that the defendants have not been able to satisfy that inspite of exercise of due diligence, earlier it was not possible to bring on record the facts, as proposed by the amendment. To support the submission that the impugned order is unsustainable inasmuch as proviso below Rule 17 of Order 6 of the Code of Civil Procedure is not considered, reliance is placed on the judgment given by this Court in Writ Petition No. 1322/2013 (Smt. Jayashree Subhash Kalbande & anr. vs. Shri Bhaurao Nagorao Derkar & ors.) on 18/02/2014.

With the assistance of the learned advocates for the respective parties and learned AGP, I have gone through the plaint, proposed amendment as also the impugned order. The dispute is between the first cousins and is relating to immovable property, mainly the agricultural land. By the proposed amendment, the defendants are trying to bring on record the history of succession and factum of execution of the sale-deed dated 19/02/1971 which is a registered document. Though there is some lapse on the part of the defendants and the proposed amendment is sought to be incorporated at a late stage, looking to the nature of dispute, I find that the trial Court has not committed any illegality or error of jurisdiction by allowing the application (Exh. 107) and permitting the defendants to incorporate the proposed amendment in the written statement. The proposition laid down in the judgment relied upon by the learned advocate for the petitioner cannot be disputed. However, it cannot be said that the bar created by proviso below Rule 17 of Order 6 of

the Code of Civil Procedure is absolute and the Court has no jurisdiction to consider the prayer for amendment in the facts of the case. Hence, the judgment relied upon by the learned advocate for the petitioner, in the facts of the case, is not of any assistance to the petitioner.

In view of the above, 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

Ansari