

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

WRIT PETITION NO. 3296 Of 2019

Chhannu S/o Vithoba Jikar and ors.

..VS..

Sudha W/o Vikas Botfole

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

Court's or Judge's orders

Shri Piyush S. Kadam, adv. For the petitioner.

CORAM : Z.A.HAQ, J.

DATED : 23rd July, 2019

Heard.

The original defendants have challenged the order passed by the trial Court by which the application (Exhibit 71) filed by the respondent/plaintiff under Order VI Rule 17 of the Code of Civil Procedure is allowed and the plaintiff is permitted to amend the plaint and incorporate the prayer for seeking the declaration that the sale deed registered on 24.07.2009 in favour of the defendant No. 2 is not binding on the plaintiff and is liable to be cancelled in respect of the share of the plaintiff.

The plaintiff has filed civil suit praying for decree for partition and separate possession of the suit property. According to the plaintiff, the prayer challenging the legality of the sale-deed dated 24.07.2009 remained to be incorporated in the plaint due to mistake of the advocate who represented the plaintiff earlier, and this mistake came to notice of new advocate engaged by the plaintiff at the time of cross-examination of the defendant.

The learned trial Judge found that the explanation given by the plaintiff for the delay in seeking the proposed amendment is justified and has permitted the plaintiff to amend the plaint. The learned trial Judge has exercised his discretion and jurisdiction judiciously and properly. Hence, I see no reason to interfere with the impugned order.

One of the contention on behalf of the petitioners/defendants is that the proposed amendment changes the nature of the suit. The submission cannot be accepted as nature of the suit would not change, and if the plaintiff succeeds in getting the decree for partition and separate possession, he may be entitled for the consequential relief.

Hence, writ petition is dismissed. No costs.

JUDGE

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