

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

WRIT PETITION NO.1822 OF 2018

Jaykishan Nathmalji Rathi and anr.

-vs-

Nandkishor Jagannathji Rathi and anr.

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

Court's or Judge's Orders.

Shri Alok Daga, Advocate for petitioners.

CORAM : A.S.CHANDURKAR, J.

DATE : July 08, 2019

As the respondents have been duly served, the writ petition is heard finally.

On 25/06/2019 there was no appearance on behalf of the respondents and hence the matter was kept today to grant one opportunity to the respondents. However, there is no appearance on their behalf even today.

2. Order dated 08/03/2017 passed below Exhibit-18 rejecting the application seeking amendment in the written statement is under challenge. In the suit as filed by the respondents it was pleaded by them in paragraph 9 that while undertaking new construction activity with regard to Northern side wall of the suit property, both the parties had agreed to construct their own wall

by taking possession of half the wall to the extent of 9” independently. In the written statement the defendant in reply to paragraph 9 pleaded that contents of paragraph 9 of the plaint were admitted. On the ground that the word “admitted” was a typographical error, the application below Exhibit-18 seeking substitution of the word “denied” in its place came to be moved. The trial Court was of the view that the permission to carry out amendment would result in the admission as made being withdrawn. Hence the trial Court rejected the said application.

3. Heard Shri A. Daga, learned counsel for the petitioners and perused the plaint as well as written statement. In paragraphs 24 and 25 of the written statement there are specific pleadings that it was agreed between the plaintiff and the defendant No.1 that a common wall would be raised from the center of the area admeasuring 9' by leaving space of 4'.5” from both the sides. It is further pleaded that this was agreed by both the parties. In the light of these specific pleadings it becomes clear that the word “admitted” as stated with regard to paragraph 9 is a typographical error. When it is replaced by the word “denied” the stand of the defendant No.1 as taken in paragraphs 24 and 25 becomes consistent with such denial. Moreover, the trial of the suit in the

form of recording of evidence was yet to commence. The trial Court therefore ought to have allowed the application for amendment as it was seeking correction of a typographical error. By failing to do so it failed to exercise jurisdiction vested in it.

4. Accordingly, the order passed below Exhibit-18 is set aside. Application for amendment below Exhibit-18 is allowed with liberty to the plaintiffs to carry out consequential amendment if they so desire.

The Writ Petition is allowed and disposed of. No costs.

JUDGE