

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

WRIT PETITION NO.3927 OF 2019

(SANJIVKUMAR BISANDAS BHARDWAJ...VS.. VIRENDRA VINAYAK BORKAR & OTH.)

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

Court's or Judge's orders

Shri S. Raisuddin, Advocate for Petitioner.
Shri N.B.Bargat, Advocate for Respondent No.1.
Ms Geeta Tiwari, A.G.P. for Respondent Nos. 2 to 4.

CORAM : Z.A.HAQ, J.

DATED : JULY 25, 2019.

Heard.

The petitioner/ plaintiff has filed civil suit praying for decree for declaration that the possession of the plaintiff over the suit land is lawful. The petitioner/ plaintiff has prayed for decree for permanent injunction restraining the defendants from interfering with his possession over the suit land. After issues came to be framed, the plaintiff had filed application (Exh.39) under Order 6 Rule 17 of the Code of Civil Procedure seeking permission to amend the plaint. By the proposed amendment, the plaintiff sought to claim decree for declaration that he has become owner of the suit land by adverse possession. The plaintiff further sought to amend the prayer clause and seek decree against the defendant Nos. 2 to 4 i.e. Collector, Tahsildar and Talathi restraining them from interfering with the possession of the plaintiff over the suit land. This application (Exh.No.39) is dismissed by the impugned order.

The learned Advocate for the respondent No.1 has pointed out the judgment given by the Hon'ble Supreme Court in the case of *Gurudwara Sahib Vs. Gram Panchayat Village Sirthala*, reported in **2014(7) ALL MR 813 (S.C.)** in which it is laid down that the declaration on the basis of adverse possession cannot be sought by the plaintiff and adverse possession can be used as defence only.

Considering the nature of the proposed amendment, it cannot be said that the order passed by the learned trial Judge, rejecting the application (Exh.39) is illegal or suffers from any error of 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