

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

WRIT PETITION NO.3898 OF 2019

(SMT. PRABHAVATI GANPATRAO NIKHADE & ANR..VS.. PREMSHEELA HEMANTRAO SATKAR & ANR.)

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

Court's or Judge's orders

Shri M.R.Joharapurkar, Advocate for Petitioners.

CORAM : Z.A.HAQ, J.

DATED : JUNE 12, 2019.

Heard.

The respondent No.1/ plaintiff filed civil suit praying for declaration that he is co-parcener and has share in the suit property and the defendant Nos. 1 and 2 had no right to deal with the share of the plaintiff. The plaintiff sought declaration that the sale-deed dated 19th March 2016 executed by the defendant Nos. 1 and 2 in favour of the defendant No.3 was illegal and not binding on the plaintiff. The plaintiff had also filed an application praying for temporary injunction restraining the defendant Nos. 1 and 2 from changing the nature of the property. This application was rejected. Again the plaintiff had filed application (Exh.40) seeking restraint order against the respondent No.3 from undertaking any construction over the suit property. By order dated 6th September 2018, the trial Court allowed the application (Exh.40). The trial progressed and after the plaintiff filed affidavit in lieu of the examination-in-chief, the plaintiff filed application (Exh.48) under Order VI Rule 17 of the Code of Civil Procedure seeking permission to amend the

plaint. By the proposed amendment, the plaintiff sought permission to incorporate the pleadings to the effect that he is entitled for half share in the suit property and prayed for decree for partition and separate possession of his half share in the suit property. This application is allowed by the impugned order.

The contention on behalf of the petitioners/ defendants is that the reason given by the plaintiff for the lapse on his part and not moving the amendment application earlier, cannot be accepted. The petitioners/ defendants Nos 1 and 2 further contend that the plaintiff cannot be permitted to amend the plaint after commencement of trial i.e. after filing of the affidavit in lieu of the examination-in-chief.

After examining the matter and going through the impugned order, I find that the learned trial Judge has rightly appreciated the controversy and has rightly permitted the plaintiff to amend the plaint, keeping in view the fact that the claim of the plaintiff in the plaint and the proposed amendment is of the same nature. It cannot be said that the impugned order suffers from any illegality or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

Hence, the writ petition is **dismissed**. No costs.

JUDGE