

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

WRIT PETITION NO.2855 OF 2019

(PANDURANG MAROTI WAGHMARE....VS.. SHRAWAN RAJARAMJI WAGHMARE & OTH.)

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

Court's or Judge's orders

Shri P.A.Markandeywar, Advocate for Petitioner.
Ms Vijaya Thakre, Advocate for Respondents.

CORAM : Z.A.HAQ, J.

DATED : JULY 02, 2019.

Ms Vijaya Thakre, learned Advocate for the respondents seeks time to take instructions on Civil Application No. 1715 of 2019.

Heard Shri P.A.Markandeywar, Advocate for the petitioner.

The petitioner had filed civil suit against the respondents/defendants praying for decree for partition and separate possession of his share in the suit property. The civil suit is dismissed by the trial Court. The judgment and decree passed by the trial Court is challenged by the petitioner before the District Court. The appeal is pending. In the appeal, the petitioner had filed application (Exh.13) under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure seeking permission to amend the plaint. By the proposed amendment, the petitioner/plaintiff wanted to bring on record the pleadings about partition alleged to have taken place in 1973. This application is dismissed by the impugned order.

During pendency of the present writ petition, the Sub-Divisional Officer has passed an order on 14th May 2019 and has directed the Tahsildar to make entries in the revenue records as per the partition which, according to the petitioner/plaintiff, had taken place about 40 years ago. The petitioner now seeks permission to bring on record copy of order passed by Sub-Divisional Officer. The learned Advocate for the respondents submits that whether the order passed by the Sub-Divisional Officer on 14th May 2019 and 15th May 2019 is challenged or not or is being challenged, is not known at this stage.

The learned Advocate for the petitioner/ plaintiff sought permission to withdraw the application (Exh.13) filed by the petitioner /plaintiff before District Court with liberty to file fresh application and bring on record the subsequent events also.

Considering the facts of the case, in my view, interests of justice would be sub-served by passing the following order:

- i) The petitioner plaintiff is permitted to withdraw the application (Exh.13) filed by him before the District Court in Regular Civil Appeal No. 637 of 2016. As the application stands withdrawn, the order passed it on 28th January 2019 loses its efficacy and does not survive.
- ii) The petitioner/plaintiff is granted liberty to file fresh application, if so advised.

If fresh application is filed, it shall be considered by the learned District Judge on its merits, according to law.

The writ petition is **disposed** in the above terms. In the circumstances, the parties to bear their own costs.

CIVIL APPLN.NO. 1715/2019.

In view of disposal of the writ petition, the application seeking permission to produce certified copy of order dated 14-15/05/2019 on record does not survive, hence, it is disposed.

JUDGE

RRaut..