

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

Writ Petition No.5105 of 2016
Rambhau Banait & Anr. Vs. Mukinda Banait & Others

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

Court's or Judge's orders

Mr. S.M. Nafde, Advocate for petitioners
Mr. K.V. Deshmukh, Advocate for respondents No. 1 to 7.

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 20, 2019

By this writ petition, the petitioners (original plaintiffs) have challenged order dated 29/4/2016, passed by the Court of Joint Civil Judge (Jr. Dn.), Narkhed (Trial Court), whereby an application for amendment of plaint filed under Order 6 Rule 17 of the Code of Civil Procedure, has been rejected.

2. The petitioners filed a suit in the year 2014, claiming that they had right of way to their agricultural field through the fields owned by the respondents. In the written statement the respondents took a stand that there was already a way existing from another field for access to the agricultural field of the petitioners. Therefore, there was no substance in the grievance sought to be raised in the suit.

3. Thereafter, the petitioners moved an application on 22/3/2016, seeking to add paragraphs 4-B to 4-D, in the plaint, in order to explain why the alternative way indicated by the respondents was no longer available to the petitioners.

4. The said application has been rejected by the impugned order, primarily on the ground that the written statement was filed much earlier and order had been passed in the application for temporary injunction (Exh.5), wherein the aspect of the alternative way available to the petitioners was before the Court and, therefore, the petitioners ought to have swiftly moved for raising pleadings in respect of said specific defence raised on behalf of the respondents. The Court below has emphasized on the lethargy on the part of the petitioners in moving the application for amendment and on that ground, the application has been rejected.

5. The learned counsel for the petitioners has pointed out that, it is an admitted position that the trial was yet to commence when the application for amendment was moved and, therefore, such application was not hit by the proviso to Order 6 Rule 17 of the Code of Civil Procedure and contents of the proposed amendment would show that it would be necessary for determining real question in controversy between the parties.

6. On the other hand, the learned counsel for the respondents submitted that the explanation given in the application seeking amendment was not tenable, because all the facts sought to be brought on record by way of amendment were already within the knowledge of the petitioners when the suit was filed and, therefore, no error can be attributed to the Court below for passing the impugned order.

7. Although, the facts on record do indicate that the application for amendment was moved by the petitioners after some delay, in the sense that the suit itself was filed in the year 2014 and when the aforesaid specific defence was taken on the part of the defendants, the petitioners ought to have moved the application for amendment to deal with the stand taken by the respondents (defendants). At the same time, when the application for amendment was moved, the trial was yet to commence and, therefore, the only question that the Court was required to consider was whether the proposed amendment was necessary to determine the real question in controversy between the parties. Considering the nature of defence raised on behalf of the respondents and the pleadings sought to be brought on record by the petitioners, it becomes clear that if the amendment is allowed, it would assist the Court in determining the real question in controversy between the parties.

8. In view of the above, this Court is of the opinion that the impugned order is erroneous and, therefore, it deserves to be set aside. Accordingly, the writ petition is allowed. The impugned order is quashed and set aside and the application for amendment filed by the petitioners (Exh.48) is allowed in terms of prayers made therein. The petitioners shall carry out the amendment within a period of four weeks from today.

9. Upon the amendment being carried out by the petitioners, the respondents shall be permitted to carry out the consequential amendment in their written statement within a period of four weeks thereafter.

10. The Trial Court is directed to dispose of the suit expeditiously.

11. Writ petition is disposed of in above terms.

JUDGE