

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

WRIT PETITION NO.6247/2019

Jagannath S/o. Natthuji Hiralkar

..VS..

Smt Mainabai Pandurag Satav

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

Court's or Judge's orders

Shri H. R. Gadhia, Advocate for the petitioner

CORAM : Z.A.HAQ, J.

DATED : 11th September 2019

Heard.

2] By the impugned order, trial Court has permitted the respondent/plaintiff to amend the plaint.

3] Initially plaintiff prayed for decree for declaration that she is in possession of the suit property and prayed for decree for injunction restraining the defendant from interfering with her possession over the suit property. Before the defendant filed written statement, plaintiff moved the application (Exh. 32) seeking permission to amend the plaint. By the proposed amendment the plaintiff sought to bring on record the fact that she lost possession two months prior to the filling of the civil suit, and now she is praying for decree for possession of the suit property.

4] Relying on the judgment given by this Court in **Writ Petition No. 1367/2017** (*Shri Ramdas Pandurang*

Dhage & Ors. .v/s. Shri Kashinath Eknath Khirkade & Ors.) on 20th March 2018, it is argued that such amendment cannot be permitted as it changes the nature of claim. The judgment relied upon by learned Advocate for the petitioner/defendant is distinguishable on facts, inasmuch as, in that case the civil suit praying for decree for injunction simplicitor was filed in 2008 and the plaintiff had amended the plaint in 2013 and 2015 and then after the trial commenced the plaintiff had again sought permission to amend the plaint to seek decree for possession. As recorded earlier, in the present case the plaintiff has filed the application (Exh. 32) before the filing of written statement by the defendant.

5] The advocate for the petitioner has not pointed out any other legal impediment because of which the application (Exh.32) cannot be allowed.

6] In the facts of the case, I find that the learned trial Judge has not committed any illegality or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

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

JUDGE