

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

WRIT PETITION NO.6757 OF 2019

Kamlesh s/o Dharamdas Punekar and anr.

-vs-

Chandrashekhhar Sukhmandas Punekar and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri D. N. Dani, Advocate for petitioners.

Shri R. M. Sharma, Advocate for respondent Nos.1 to 4.

CORAM : A. S. CHANDURKAR, J.

DATE : December 06, 2019

Considering the short issue involved, learned counsel for the parties have been heard by issuing Rule and making it returnable forthwith.

2. The order dated 21/09/2019 passed by the trial Court below Exhibit-66 partly allowing the application for amendment is challenged to the extent part thereof has been disallowed. The petitioners are the original plaintiffs who have filed the suit for partition and separate possession. They have also sought a declaration that the deed of partition dated 11/05/2000 is not binding on them. During pendency of the proceedings an application for amendment at Exhibit-66 was moved. Paragraphs 19A to 19E were sought to be amended. The trial Court partly allowed that

application and permitted the amendment as sought to paragraphs 19A to 19C. The amendment in relation to paragraphs 19D and 19E has been disallowed.

3. Shri D. N. Dani, learned counsel for the petitioners submits that considering the fact that the application for amendment was allowed in part there was no reason to disallow the amendment as sought in paragraphs 19D and 19E. These pleadings referred to the partition deed dated 11/05/2000 and as to the manner in which it was non-est. Since the petitioners got further knowledge by obtaining information after filing of the suit, the amendment was sought necessary but it was partly allowed. Nature of the suit would not be changed by virtue of said amendment and therefore the application at Exhibit-66 ought to have been allowed in its entirety.

4. Shri R. M. Sharma, learned counsel for the respondent Nos.1 to 4 supported the impugned order. According to him the amendment as sought in paragraphs 19D and 19E was not related with the amendment that was granted by the trial Court vide paragraphs 19A to 19C. A new case was sought to be set up in those pleadings by taking the stand that the plaintiff No.2 was an illiterate lady who could not read and write. These facts were within the

knowledge of the plaintiffs and hence they should have been pleaded earlier. The trial Court is therefore justified in refusing to grant that amendment.

5. After hearing learned counsel for the parties and after perusing the pleadings it is found that the application for amendment ought to have been allowed in its entirety. It is seen that paragraphs 19A to 19E raise a challenge to the partition deed dated 11/05/2000 by raising various grounds. The deed of partition itself has been questioned in the suit. The grounds raised were sought to be amplified by the amendment. A reference is also made to the status of the plaintiffs in that regard. Considering the fact that the trial Court was pleased to permit the amendment as sought in paragraphs-19A to 19-C while passing the impugned order the aspect of due diligence stands satisfied in that regard. The amendment as sought in paragraphs 19-D and 19-E cannot be said to be of such nature that it did not deserve to be allowed especially when there were some pleadings on record in the plaint as initially filed with regard to the partition-deed dated 11/05/2000. Since the entire partition-deed was the subject matter of challenge in the suit as filed, the amendment as sought in paragraphs 19-D and 19-E was also liable to be allowed. I do not find any justifiable reason to

disallow that amendment. It is always open for the defendants to raise consequential amendment in the written statement and oppose the amended pleadings on merits. In that view of the matter I am inclined to allow the application for amendment in its entirety.

6. Accordingly the order passed below Exhibit-66 to the extent the amendment vide paragraphs 19-D and 19-E has been disallowed stands set aside. The application at Exhibit-66 is allowed in its entirety. The trial Court shall decide the suit on its own merits without being influenced in any manner whatsoever with the observations made in this order.

The Writ Petition is allowed in aforesaid terms. Rule is made absolute accordingly. Parties shall bear their own costs.

JUDGE