

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

WRIT PETITION NO. 706 OF 2018

- PETITIONERS:**
1. Dilip S/o Ramkrushna Chandekar,
aged about 50 years, Occ. Service,
 2. Devendra s/o Ramkrushna Chandekar,
aged about 46 years, Occ. business,
 3. Narendra s/o Ramkrushna Chandekar,
aged about 44 years, Occ. business,
 4. Kamlakar s/o Ramkrushna Chandekar,
aged about 38 years, Occ. Private,
- All R/o. Juni Mangalwari,
Chandekar Mohalla, Nagpur.
5. Vanita w/o Prakash Moudekar,
Aged about 35 years, Occ. Household,
R/o. Vaishali Nagar, Ambedkar Garden,
Nagpur.

...VERSUS...

- RESPONDENTS:**
1. Divisional Commissioner,
State of Maharashtra,
Nagpur Division, Civil Lines, Nagpur.
 2. Collector, Nagpur
Nagpur District, Collectorate Premises,
Civil Lines, Nagpur.
 3. Nazul Nayab Tahsildar,
Civil Lines, Tahsil Office, Nagpur.
 4. Rambhau as/o Mahadeo Chandekar,

Aged about 72 years, Occ. Retired,

5. Parvatibai wd/o Narayan Chandekar,
aged about 65 years, Occ. Household.
6. Chandrakant s/o Narayan Chandekar,
aged about 46 years, Occ. Business,
7. Suryakant s/o Narayan Chandekar,
aged about 44 years, Occ. Business,
8. Ramchandra s/o Narayan Chandekar,
aged about 36 years, Occ. Business,
9. Sunderbai w/o Ganesh Parate,
Aged about 40 years, Occ. Household

All 4 to 9 being R/o. Juni Mangalwari,
Kolbaswami Chowk, Chandekar Mohalla,
Nagpur.

10. Kaushalyabai w/o Harishchandra Mohadikar,
aged about 52 years, Occ. Household,
R/o. Jagganath Budhwari Road, Near Kailash
Talkji, Kumbharpur, Nagpur.

Mr. Deoul Pathak, Advocate Petitioners.
Mr. A.M.Ghodeswar, AGP for Respondent Nos. 1 to 3
Ms. Leena S. Dhapodkar, Advocate h/f Shri A.S.Joshi, Advocate
for respondent Nos. 4 to 10

CORAM : AVINASH G. GHAROTE, J.
DATE : 08/03/2021.

1] Rule. Rule made returnable forthwith. Heard finally by
consent of the learned counsel appearing for the parties.

2] The application for amendment of the written statement filed by the L.Rs of deceased defendant who are brought on record has been rejected, on the ground that they had already adopted the earlier written statement filed by the original defendant by filing a pursis and they had also filed an application for consequential amendment, which came to be allowed partly on 10.06.2016, on which date another application for amendment of the written statement came to be filed.

3] It is an admitted position that the stage of the suit when the application for amendment of written statement was filed, was for framing of the issues, which indicated that the trial had not as yet commenced. It is trite that at the time of deciding an application for amendment, the Court is not concerned with the merits of the amendment. All that is necessary to be seen is whether the application is bonafide and is not made with an intention to prolong the matter. The question of due diligence would arise only after the trial commences and not otherwise.

4] In the instant case, since admittedly the trial was yet to commence, the learned trial Court ought to have permitted the defendants to amend the written statement, so that all questions raised therein could have been effectively decided in the suit itself. Merely because the defendants can be said to be aware of the earlier litigation, that would not prevent an amendment for raising a plea regarding the effect of such litigation.

5] In that view of the matter, the impugned order dated 12.09.2017 passed by the Civil Judge, Senior Division, Nagpur, below Exh.62 in Special Civil Suit No. 224/2016 requires to be quashed and set aside, which is accordingly done and the application for amendment, as filed at Exh.62, is allowed.

6] Rule made absolute in above terms. No costs.

JUDGE

Rvjalit

**Rajesh
Jalit**

Digitally
signed by
Rajesh Jalit
Date:
2021.03.10
15:06:41
+0530