

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

WRIT PETITION NO. 3838 OF 2017

Tanvirsultana Wd/o Anwar Beg,
Aged about 55 years, Occ: Agriculture
& Household, R/o Barabhai Mohalla, Daravha,
Taluka – Daravha, Dist. Yavatmal. **...PETITIONER**

...VERSUS...

- 1) Shriram Rajaram Talmale,
Aged about 56 years, Occ: Agriculturist,
- 2) Gulab Rajaram Talmale,
Aged about 52 years, Occ: Agriculture,
- 3) Pundit Kisan Talmale,
Aged about 29 years, Occ: Agriculture,
- 4) Smt. Sakhubai Kisan Talmale,
Aged about 56 years, Occ: Agriculture,

All Respondent Nos.1 to 4,
R/o Kinhi, Taluka and Dist. Yavatmal.

- 5) Ramesh Girdharilal Nathwani,
Aged about 50 years, Occ: Agriculture,
R/o. Jamankar Nagar, Yavatmal,
Taluka and District Yavatmal.
- 6) Gulamali Akbarali Jiwani,
Aged about 53 years, Occ: Agriculture,
R/o Shahid Society, Yavatmal,
Taluka and District Yavatmal.
- 7) Yakubali Wahedali Patel,
Aged about 80 years, Occ: Agriculture,
R/o. Islampura, Yavatmal,
Taluka and District Yavatmal.

- 8) Tasneemrehana Abdul Hamid,
Aged about 57 years, Occ: Household,
R/o. Chandni Chowk, Amravati,
Taluka and District Amravati.
- 9) Nasreenrehana Ishtiyak Ahmedkhan,
Aged about 55 years, Occ: Household,
R/o. Ground Floor, Atika Manzil,
Near Wakola Masjid, Santacruz (East)
Mumbai-400001.
- 10) Kausar Jamil Mohammad Sohaib,
Aged about 50 years, Occ: Household,
R/o. Barabhai Mohalla, Daravha,
Taluka Daravha, District Yavatmal.

...RESPONDENTS

Mr. A. R. Deshpande, Advocate for petitioner.
Mr. A. V. Bhide, Advocate for respondent nos.1,2,3 and 4.

CORAM:- V. M. DESHPANDE, J.
DATED :- JANUARY 25, 2021.

ORAL JUDGMENT

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

2. Heard Mr. Deshpande, learned counsel for petitioner
and Mr. Bhide, learned counsel for respondent nos.1 to 4. Though
served, nobody appears on behalf of respondent nos.5 to 10.

3. By this writ petition, petitioner is challenging order
dated 20.06.2016 passed by learned Civil Judge Senior Division,

Yavatmal below Exh.-58, rejecting the application filed on behalf of petitioner seeking permission to carry out amendment.

4. Undisputedly, respondent nos.5 to 7 herein were plaintiffs whereas respondent nos.1 to 4 were defendants. Special Civil Suit No.51/2009 for specific performance of contract was filed by the plaintiff and the said suit was decided and disposed of, in view of compromise between plaintiff and defendants therein. Decree to that effect was passed on 19.06.2010.

5. Present petitioner, on 29.11.2010 filed an application under Order XXI Rules 97, 99 and 101 of the Code of Civil Procedure in the Court of learned Civil Judge Senior Division, Yavatmal with a contention that her father was also having share in the property and he was not before Court and since she represents his estate, she has also a share in the property. The application filed on behalf of the petitioner was registered as M.J.C. No. 119/2010. The non applicants therein appeared. In the said M.J.C. The present petitioner filed an application (Exh.-46) for amendment. The application for amendment (Exh.-46) was allowed by learned Jt. Civil Judge Senior Division, on 01.07.2015.

None of the non applicants, including the present respondents, have challenged order dated 01.07.2015, whereby the application for amendment of the present petitioner was allowed. Though, it was obligatory on the part of petitioner to carry out amendment as per order dated 01.07.2015. The amendment was not carried out within time and, therefore, application Exh.-58 was filed. In paragraph 2 of the application, reasons were given as to why amendment could not be carried out. The learned Judge on 20.06.2011, rejected the said application and refused the petitioner to carry out amendment in view of earlier order dated 01.07.2015. The order is cryptic one and it does not take into consideration the facts stated in paragraph 2 of Exh.-58. Further, original application for amendment, which was granted, was not challenged by anybody.

6. In view of that and in the interest of justice, I pass the following order.

ORDER

- (i) The writ petition is allowed.
- (ii) Order dated 20.06.2016 passed in M.J.C. No. 119/2010 by Civil Judge Senior Division, Yavatmal, is quashed and set aside.

(iii) The petitioner is directed to carry out amendment within 15 days from today, subject to payment of costs of Rs.1,000/- to defendant nos.1 to 4 who are respondent nos. 1 to 4 in the present writ petition.

(iv) The amount of costs be deposited in the trial Court at the time of carrying out amendment.

Rule is made absolute.

JUDGE