

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

WRIT PETITION NO.1498/2021

1. Smt. Lalzadi Wd/o Shivlal Bhagat,
Aged 59 years, Occu.: Household,
2. Shri Shyam s/o Shivlal Bhagat,
Aged 35 years, Occ. Business,
3. Shri Ram S/o Shivlal Bhagat,
Aged 33 years, Occ. Business,
4. Gopal s/o Shivlal Bhagat,
Aged 32 years, Occ. Business,

All R/o. Chuna Bhatti, Near Bus Stop
Kh. No.176, Panchgaon, Tah. Umred,
Distt. Nagpur.

..... PETITIONERS
(Ori. Plaintiff)
(Appellants in RCA no.439/19)

// VERSUS //

1. Shri Amrutlal S/o Sahadeo Shahu
Aged 58 years, Occ. Cultivator,
R/o Plot No.1, Sainagar, Dighori,
Ring Road Chowk, Nagpur.
2. Shri Chotelal S/o Sahadeo Shahu,
Aged 54 years, Occu. Cultivator,
R/o Plot No.218, Ingle Nagar,
Hudkeshwar Road, Nagpur.

.... RESPONDENTS
(Ori. Defendants)
(Respondents in R.C.A.no.439/19)

WITH

WRIT PETITION NO.1499/2021

1. Smt. Lalzadi Wd/o Shivlal Bhagat,
Aged 59 years, Occu.: Household,
2. Shri Shyam s/o Shivlal Bhagat,
Aged 35 years, Occ. Business,

3. Shri Ram S/o Shivlal Bhagat,
Aged 33 years, Occ. Business,

4. Gopal s/o Shivlal Bhagat,
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All R/o. Chuna Bhatti, Near Bus Stop
Kh. No.176, Panchgaon, Tah. Umred,
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..... **PETITIONERS**
(Ori. Plaintiff)
(Appellants in RCA no.440/19)

// VERSUS //

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Aged 58 years, Occ. Cultivator,
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Hudkeshwar Road, Nagpur.

.... **RESPONDENTS**
(Ori. Defendants)
(Respondents in R.C.A.no.440/19)

Mr. Sawan Alaspurkar, Advocate for petitoins in both petitoins.
Mr. H. D. Sahu, Advocate for respondents in both petitions.

CORAM : AVINASH G. GHAROTE, J.

DATED : 16/09/2021

ORAL JUDGMENT :

Heard Mr. Alaspurkar, learned Counsel for the petitioners
and Mr. Sahu, learned Counsel for the respondents.

2] **Rule.** Rule made returnable forthwith.

3] Heard finally by consent of the learned counsel appearing
for the parties.

4] RCS No.21 of 2015 was filed by the petitioners/plaintiffs for a declaration and permanent injunction, in which the respondents/defendants filed a Counter Claim for possession. The suit was dismissed and Counter Claim was allowed, against which two appeals are filed RCA No.439 of 2019 and RCA No. 440 of 2019.

5] In the above two appeals an application for amendment came to be filed, when the appeal was fixed for final arguments, proposing to amend the plaint, on the basis of an application for exemption from personal appearance of Vidhya Zha, filed by one Virendra Zha in criminal proceedings against Erstwhile owners of the suit property, Virendra Zha and Vidhya Zha, who had executed the Sale Deed dated 1.12.2014 in favour of the defendants/respondents, to the effect that Vidhya Zha be exempted from personal appearance on 9.1.2020 on the ground that she was mentally ill. Taking cue of this statement, the plaint was sought to be amended by laying a challenge to the Sale Deed dated 1.12.2014. The application for amendment, however, came to be rejected by the learned Appellate Court by the impugned order 24.2.2021, holding that since there has been no challenge to the Sale Deed dated 1.12.2014 by the vendors, the issue of the legality and validity was not germane for deciding the real controversy between the parties.

6] Mr. Alaspurkar, learned Counsel for the petitioners submits that the statement regarding mental illness of one of the vendors to the Sale Deed dated 1.12.2014, directly affects the title of the defendants and therefore, was a question essential to be decided and since this fact was noticed for the first time at the final arguments of the appeal, the application was clearly maintainable.

7] Mr. Sahu, learned Counsel for the respondents opposes the petitions.

8] It is an admitted position that the appellant does not have any right title or interest to the suit property, which was owned by Virendra Zha and his sister Vidhya Zha, who have transferred the same to the respondents by the Sale Deed dated 1.12.2014. Before the Trial Court one of the plaintiff, namely, Shri Shyam Shivilal Bhagat (petitioner no.2) is claimed to have admitted the Sale Deed and on the basis of said admission, judgment has been passed by the learned Trial Court, which is under challenge. A further plea has been raised by the plaintiffs/petitioners that they have become owners by way of adverse possession of the suit property. This would clearly indicate that the petitioners / plaintiffs did not have any legal right in the property in question and therefore, also have no locus to challenge the Sale Deed dated dated 1.12.2014. The proposed amendment has rightly been held by the learned Appellate Court, not to be essential for determining the

real controversy between the parties which is relating to the eviction of the petitioners from the suit premises. That being the position, I do not see any infirmity in the impugned orders. The petitions therefore, are without any merit and accordingly are dismissed.

9] Rule is discharged.

10] Needless to say that the lower Court shall decide the appeal before it without being influenced by the observations of this Court and shall make an endeavour to decide the appeals, as expeditiously as possible.

(AVINASH G. GHAROTE, J)

Sarkate.