

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

WRIT PETITION NO. 2232 OF 2021

Rajesh Gajanan Nikhare and others

vs.

Lahuji Vithobaji Nikhare

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

Court's or Judge's Orders.

Mr. V. N. Morande, Advocate for petitioners.

CORAM : MANISH PITALE J.

DATE : 28/06/2021

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this writ petition, the petitioners have challenged order dated 18/02/2021, passed by the Court of Joint Civil Judge, Junior Division, Gadchiroli, whereby an application for amendment under Order VI Rule 17 and for addition of parties under Order I Rule 10 of the Civil Procedure Code, 1906 (Exh.74) filed by the respondent No.1 was allowed.

3. It appears that the said application was allowed by the Court below on the basis that there was a relinquishment deed and sale deed executed by the original defendants in respect of the suit property.

4. The learned counsel for the petitioners submitted that in the earlier round of litigation before this Court, it was found that the preliminary issue regarding limitation raised on behalf of the petitioners was required to be decided on merits. It is submitted that after Writ Petition No.1448 of 2019 was disposed of by this Court on 06/06/2019, the recording of evidence pertaining to the preliminary issue was undertaken.

5. But, the respondent No.1, as the plaintiff has been delaying the matter not only in the course of recording of such evidence on the preliminary issue, but by filing the said application at Exh.74, only with the intention of dragging the proceedings before the Court below. In this connection, the learned counsel has brought to the notice of this Court the Roznama of the Court below indicating that after the impugned order has been passed now written statement of the newly added respondents is awaited before the Court below.

6. This Court has perused the impugned order. Although, in the facts and circumstances of the present case, the impugned order passed by the Court below does not appear to be erroneous and hence, interference is not warranted, yet the aforesaid factors brought to the notice of this Court necessitate appropriate directions to be given to the Court below.

7. In view of the above, the Writ Petition is dismissed. But, at the same time the Court below is directed to immediately take steps for deciding the aforesaid preliminary issue regarding limitation, specifically framed before the Court below. This is in the light of the fact that this Court also in its order dated 06/06/2019, passed in Writ Petition No.1448 of 2019, had taken note of the fact that the question in the present case is, as to whether the suit filed by the respondent No.1 was delayed by about 32 years, as contended by the petitioners (defendants) before this Court.

8. This Court is informed that the evidence of the respondent No.1 on the preliminary issue has been recorded, but his side of the evidence is yet to be closed and that the matter is languishing at this stage.

9. Therefore, the Court below is directed that the preliminary issue already framed, pertaining to the question on limitation, shall be taken up and decided as expeditiously as possible and in any case within six weeks from today. All parties before the Court below are directed to cooperate with the Court for disposal of the said preliminary issue within the stipulated period of time.

10. Writ petition is disposed of. No order as to costs.

JUDGE