

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO.1289/2021

Shri Ganpat Janbaji Ramteke .vs. Smt. Manjulabai wd/o Nagoji Meshram & Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. R. T. Anthony, Advocate for petitioner.

CORAM : V.M. DESHPANDE, J.

DATED : MARCH 10, 2021

This writ petition was filed on behalf of original defendant no.1 since he is aggrieved by order passed below Exh.-61 in Regular Civil Suit No.37/2017 passed by learned Civil Judge Junior Division, Parshioni, District Nagpur rejecting his application for amendment.

Heard Mr.Anthony, learned counsel for petitioner. He submits that if amendment is allowed, there will be no prejudice to the original plaintiff. He also submits that the portion, which the petitioner wishes to incorporate in the written statement, was refused to him during the pendency of the suit and therefore the Court below has committed mistake in rejecting the application.

Plaintiff Manjulabai filed a suit against the petitioner and others for declaration, partition and separate possession. The present petitioner-defendant no.1 filed his written statement on 23.01.2018. Thereafter matter proceeded further. Be that as it may. Petitioner filed application for amendment stating therein that during the pendency he found that there is a partition deed executed between him and his brother Vasanta, the deceased by which the suit property was allotted to his share. He submits that he wants to amend written statement by incorporating these pleas.

The application was rejected by learned trial Court. It is not in dispute that the present petitioner was one of the signatories and executant of the partition deed executed between him and his brother deceased Vasanta. According to the petitioner, by the said partition deed, the suit property is allotted to his share. Since, he was the signatory to the deed of partition, it was well within knowledge of the petitioner regarding execution of the said partition deed. In spite of that he did not incorporate the said in the written statement and only when the trial has commenced, he moved the application for amendment.

In my view, this is impermissible in view of proviso to Order VI Rule 17 of the Code of Civil Procedure since the petitioner has failed to have due diligence in the matter.

There is no merit in the petition. The same is therefore, rejected. No order as to costs.

JUDGE

kahale