

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 350 OF 2022

1) Rajshri Lalmohan Singh,
Aged 40 years, Occupation – Housewife,
R/o Flat No.2R/16, Japonica-B,
Aditya Garden City, Warje, Pune,
T.D. Pune.

2) Jayashri w/o Jagannath Tapase,
Aged 42 years, Occupation – Service,
R/o Shivaji Nagar, Ward No. 27,
Near Model High School, Wardha.

.... **PETITIONERS**

VERSUS

1) Naresh Bhaskar Deogade,
Aged 44 years, Occupation – Business,

2) Kishor Bhaskar Deogade,
Aged 37 years, Occupation – Business,

Both 1 & 2 R/o Deogade Bhavan,
Telipura, Electronic Market, Sitabuldi,
Nagpur.

.... **RESPONDENTS**

Mr. I.A. Fidvi, Counsel for the petitioners,
Mr. R.M. Sharma, Counsel for respondent 2.

CORAM : ROHIT B. DEO, J.
DATED : 23rd MARCH, 2022

ORAL JUDGMENT :

The petitioners are the plaintiffs who have instituted Special Civil

Suit 727/2016 against the respondents seeking decree of declaration, partition and separate possession.

2. Considering that the plaintiffs are assailing the order dated 18-12-2021 whereby the learned trial Judge allowed the application under Order VI Rule 17 of the Civil Procedure Code (Code) preferred by the plaintiffs, only partly, it would be necessary to note the case of the plaintiffs as is originally pleaded.

3. The plaintiffs are the sisters of the defendants, and their father Mr. Bhaskar Deogade expired on 07-10-2011, leaving behind him ancestral property which is described by the plaintiffs in paragraph 1 of the plaint as City Survey 3890, situated at Telipura, Mouza-Sitabuldi and the construction thereon. In paragraph 1, the plaintiffs aver that their late father had constructed commercial shopping blocks on the ground floor and two floors for residential purpose.

In paragraph 3, the plaintiffs have averred that the defendants induced them to execute a deed of relinquishment in respect of the rights of the plaintiffs in the ancestral property assigned City Survey 3890 by promising that the defendants will relinquish their rights from property assigned City Survey 3892. Believing in such representation, the plaintiffs executed separate relinquishment-deeds dated 18-6-2015

and 20-7-2015 in favour of the defendants and their mother Smt. Suman. The substratum of the plaint is that the inability or refusal of the defendants to execute the relinquishment-deed as regards City Survey 3892 sowed seeds of doubt and suspicion in the minds of the plaintiffs and it transpired that the plaintiffs have been cheated.

The plaintiffs have *inter alia* claimed a decree of declaration that the relinquishment-deeds are void *ab initio* and that they have equal share in suit property assigned City Survey 3890. The plaintiffs have further sought partition and separate possession.

4. The plaintiffs preferred an application, after the cross-examination of plaintiff 1 was over, seeking permission to amend the plaint. While the application is quite verbose, in essence the plaintiffs contended that the promise which was given by their brothers did not pertain to City Survey 3892 and as a fact, the promise was in relation to the two commercial shop blocks situated on City Survey 3890.

5. The plaintiffs further sought certain corrections of the description of the property, which the learned trial Judge has allowed.

However, the learned trial Judge has refused to permit the plaintiffs to change their stance on the premise that a total new new case is made out. It is difficult to disagree with the finding recorded by

the learned trial Judge. I have perused the relinquishment-deeds which are made available by the learned Counsel for the plaintiffs Mr. I.A. Fidvi . I have no doubt in my mind that a completely new case is now sought to be pleaded. The case which was originally pleaded was that the inducement was that the brothers shall relinquish their shares in property assigned City Survey 3892. The defendants specifically denied such promise and further stated in the written statement that there is no such property assigned City Survey 3892 which was owned by their father. Notably, even after such stand was taken, no attempt was made before the commencement of the trial to seek amendment of the pleading.

6. I may note that if the plaintiffs ultimately succeed in their challenge to the relinquishment-deeds, the question whether there is any property which is assigned City Survey 3892 and ancillary questions may pale into insignificance.

7. I am consciously restraining from making any positive observation on the merits of the matter lest there is any prejudice. Suffice it to note that I broadly agree with the finding recorded by the trial Court that the amendment sought is impermissible and that apart from the fact that the proviso to Order VI Rule 17 of the Code is

triggered and due diligence is not established, a total new case is sought to be pleaded after the commencement of the evidence.

8. Needless to say that none of the observations in the instant judgment shall prejudice any party.

9. The petition is dismissed.

JUDGE

adgokar