

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

WRIT PETITION NO. 875 OF 2018

Sudhakar Vishnupant Bobade Vs. Rajendra Vishnupth Bobade and ors

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

Court's or Judge's orders

Mr. C.A.Barbrekar, Advocate for the petitioner
Mr. P.S.Patil, Advocate for Respondent Nos. 1 & 3

CORAM : AVINASH G. GHAROTE, J.
DATE : 26/07/2022

1] Heard Mr. Babrekar, learned counsel for the petitioner and Mr. Patil, learned counsel for the respondents.

2] The application for amendment of the written statement has been rejected by the learned trial Court by the impugned order. The ground for rejection as is spelt out from the impugned order is that, despite the affidavit evidence filed by the plaintiff on 13.11.2009, and opportunity being granted, no cross has been conducted and the “no cross” order has been passed against the defendant and in view of the proviso to Order VI Rule 17 of the CPC, the application was not maintainable.

3] Mr. Babrekar, learned counsel for the petitioner submits that the amendment of the written statement has to be construed in a liberal manner and by

way of the amendment what was being brought on record was the improvements in the suit property in respect of which a claim for partition was pending before the Court. He therefore submits that the nature of the amendment indicated that it was necessary for deciding the matter in issue and the ground on which the same was rejected, could not be construed as a ground for rejection of application for amendment.

4] Mr. Patil, learned counsel for the respondents, opposes the same and submits that the original suit is of the year 2006 and the amendment application has been filed only to delay the proceedings.

5] The suit before the Trial Court is for partition. The defendant claims to have made certain improvements in the property which are sought to be brought on record. The decree which may be passed in the suit will have to be in consonance with the factual position on record, otherwise it will be a mere paper decree leading to complications during the course of execution, considering which the impugned order is hereby quashed and set aside and the application for amendment is allowed.

6] The amendment be carried out within one week from today.

7] It is made clear that since the original suit is of the year 2006, the trial Court shall decide the same within a period of one year from the date of receipt of this order.

8] The petitioner shall place the copy of this order before the learned trial Court on 1.8.2022.

JUDGE

Rvjalit