

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

WRIT PETITION NO.1465 OF 2018

Anil s/o Wamanrao Admane and another Vs. Smt. Asha Wd/o Wamanrao Admande and others

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

Court's or Judge's orders.

Shri G.M. Shitut, Advocate for petitioners.
Shri S.A. Banik, Advocate for respondent nos.3 to 7.

CORAM : AMIT BORKAR, J.

DATE : SEPTEMBER 26, 2022.

The petitioners are challenging rejection of application for amendment of plaint, which has been rejected by the trial Court holding that the proposed amendment is not necessary to decide the matter in controversy and the plaintiffs have led their evidence on 05.03.2015.

2. The petitioners/plaintiffs have filed Regular Civil Suit No.34/2013 before the Civil Judge Junior Division, Hingna seeking the declaration that the petitioners are having 1/5th undivided share in suit property and partition and separate possession to the extent of their share. Declaration in relation to sale-deed dated 19.06.1992 has also been sought on the ground of fraud and said sale-deed not binding on the plaintiffs. The decree of permanent injunction restraining the defendants of ascertaining their title over the suit property was also sought.

3. Undisputedely, the petitioners filed their examination-in-chief on 05.03.2015. The application for amendment had been filed on 03.09.2016. There is no averment in the application for amendment required under the proviso to Order VI Rule 17. The only averment in the application which according to the petitioners satisfies the requirement of proviso is as under:

“4) Thus in view of the above subsequent events, it is necessary for the Plaintiffs to incorporate the same in the suit and same has material bearing over the matter. Needless to say that as the same is subsequent to the filing of suit and thus could not be made part and parcel of the suit.

7)The Plaintiffs humbly submit that despite the due diligence same could not be added at the earlier point of time.”

According to the petitioners, the said events have occurred after filing of suit.

4. Since, the suit is for partition and cancellation of sale-deed on the ground of fraud, the action suggested by revenue authorities as sought to be pleaded by the proposed amendment is not relevant for the decision of the suit. The trial Court was right in observing that the amendment proposed by the petitioners is not necessary to decide real controversy between the parties. Therefore, in my opinion,

the petitioners have failed to make out a case to exercise jurisdiction under Article 227 of the Constitution of India. The petition is, therefore, dismissed. No costs.

JUDGE

Wagh