

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

WRIT PETITION NO. 1662 OF 2022

(Sau. Pushpabai w/o Sahebrao Walsinge ..vs.. Smt. Tarabai w/o Nandkishor Gattani and others)

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

Court's or Judge's orders

Mr. V.B. Bhise, Counsel for the petitioner.

CORAM : ROHIT B. DEO, J.

DATED : 25-03-2022

The petitioner is the original defendant in Regular Civil Suit 81/2013 instituted by the respondents seeking decree of declaration and injunction restraining the defendant from using their agricultural field to approach the field of the defendant.

2. The defendant has lodged a counter-claim asserting that she has right to way.

3. In essence, the dispute as raised in the original plaint and the counter-claim revolves on the alleged right of way.

4. The plaintiffs preferred an application under Order VI Rule 17 of the Code of Civil Procedure (Code), and the trial has admittedly not commenced, seeking amendment to the plaint. The first factual development which the plaintiffs desired to incorporate in the pleading was that by registered sale-deed dated 24-6-2014 the

plaintiffs 1 to 4 with the consent of plaintiffs 5 & 8 sold 1.22 H.R. land to plaintiffs 6 and 7 and on even date the plaintiffs 1 to 4 sold the remaining land to plaintiff 8 and to the owner of the neighbouring field on the Western side. The plaintiffs placed on record that the plaintiffs 1 to 4 ceased to have any concern with the suit field. In so far as this part of the proposed amendment is concerned, it makes no difference to the nature of the suit since rest of the plaintiffs to whom the land is sold continue to be the owners and to have the right to prosecute the suit. The amendment presumably is sought only to keep the record straight.

5. The other part of the amendment refers to certain acts of the defendant on 18-8-2020. The averment is that due to heavy rains, plaintiff 6 who was looking after the agricultural field, was not able to visit the field. In the absence of plaintiff 6 at the field, the defendant and her husband engaged certain labours and started depositing the murum, gitti, etc. etc. on the portion of field of the plaintiffs which is delineated in letters A,B,D,C in the plaint map. The plaintiffs then make a reference to the police report dated 19-8-2020 and the notice issued through counsel dated 20-8-2020. It is on these allegations that damages are claimed as is revealed from plain reading of paragraph 3 of the application under Order VI Rule 17 of the Code.

6. Perusal of paragraph 7-B further reveals that the

reference is to the incident of August, 2020. Perusal of paragraph 7-C again reveals that the claim of damages is made on the basis of the incident of August, 2020.

7. Despite the plain language of the amendment application which is allowed, for reasons which I have not comprehended, the learned Counsel Mr. V.B. Bhise is persisting in the submission that the cause of action was available and existing as on the date of the institution of the suit. Such a submission would not have been advanced had the application seeking amendment been read properly.

8. I do not see any error in the order impugned.

9. The petition is dismissed.

JUDGE

adgokar