

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

WRIT PETITION NO.1735 OF 2022

(Sau. Jijabai w/o Ramraoji Lakhe Vs. Smt. Shewantabai wd/o Ramdasji Mehare 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. M. P. Dhruv, Advocate for Petitioner.

CORAM: ROHIT B. DEO, J.

DATE: 29th MARCH, 2022.

The petitioner is defendant 1 in Regular Civil Suit 14/2011 which is brought by respondents 1 and 2, who are plaintiffs 1 and 2 in the trial court, for partition, separate possession and declaration in respect of the suit property.

2. The trial has irrefutably commenced. The evidence of the plaintiff is over. The defendant 1 filed on record her affidavit in lieu of oral examination on 07.04.2016. The matter was therefore, contested on certain Miscellaneous Applications revolving around relinquishment deed on the basis of which according to the defendant 1 the plaintiffs have no right and share in the property.

3. The defendant 1 preferred an application under Order VI Rule 17 of the Civil Procedure Code, 1908 (Code) seeking permission to amend the written statement filed on 21.04.2011. In essence, the defendant 1 sought to

incorporate an amendment contending that the unregistered deed of relinquishment deed is a family arrangement or memorandum of partition. This application is rejected by the learned trial Judge on several grounds. The first ground is that the trial has commenced and that it is not shown that despite due diligence the matter could not have been brought before the commencement of the trial. The learned trial Judge notes that there is no attempt to establish due diligence. The learned trial Judge then proceeded to examine the unregistered relinquishment deed and after an elaborate consideration of the recitals concluded that the document is not as a fact family settlement, as is urged by defendant 1. The learned trial Judge further concluded that since the unregistered relinquishment deed was inadmissible in evidence, the only intention appears to be to have the document exhibited on the premise that the same is a family settlement. It is further observed that if the amendment is allowed, prejudice will be caused to the plaintiff.

4. While I broadly agree with the conclusion reached, particularly since the trial has commenced, the learned trial Judge could have refrained from recording a positive finding that the deed of relinquishment is not a family arrangement. While considering an application seeking amendment of the pleadings, such exercise should ordinarily be avoided.

5. While I am not inclined to interfere with the order impugned, it is clarified, that the contention/argument that the document on record is a family arrangement is kept open for the trial court to adjudicate at an appropriate stage.

6. The petition is dismissed.

JUDGE

NSN