

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

WRIT PETITION NO.919 OF 2021

Pradeep s/o Gangadharrao Birewar
Vs.

Ramnath s/o Shiva Gurnule (since deceased) through his LRs. 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. Rohit Joshi, Advocate for petitioner.

Mr. A. A. Dhawas, Advocate for respondent no.1 B.

CORAM : AVINASH G. GHAROTE, J.

DATE : 12/08/2022

1. The petition challenges the order dated 30.1.2019, whereby the application for amendment of the plaint at the appellate stage filed by the plaintiff/appellant, has been rejected, on the ground that if it is allowed it would lead to utter chaos.

2. Though the petition is vehemently opposed by Mr. Dhawas, learned counsel for the respondent no.1(B), what is material to note, is that the title of the predecessor of the respondents, in respect of the land of Plot No.11 already stood determined in the earlier round of litigation to which the plaintiff/appellant was not a party. Since the judgments in Regular Civil Suit No.236 of 1961 and Regular Civil Suit No.127 of 1967 as well as the judgments in Regular Civil Appeal Nos.62 of 1970 and Regular Civil Appeal No.47 of 1982 had decided the

rights of the predecessor of the respondents, any claim made by the respondents in the suit before the trial Court, was necessarily required to be looked into in light of what was held in the aforesaid judgments regarding the right of the predecessor of the respondents. Though the predecessor of the respondents was a party to the aforesaid legal proceedings, till the time he was alive, the aforesaid proceedings were never placed on record by him, which was his duty to the Court as a litigant. Thus, suppression of these material documents, would entitle the appellant/plaintiff, who has acquired the knowledge and possession of these documents subsequent in point of time to amend the plaint even at the appellate stage, as so as to bring on record the correct factual position *vis-a-vis* the aforesaid judgments, considering which, the impugned order is hereby quashed and set aside. The application below Exh. 25 is allowed.

3. The Writ Petition is accordingly allowed. No costs.

JUDGE

Sarkate