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

WRIT PETITION NO. 1036 OF 2021

Nagarjuna Buddha Vihar Bahu-uddeshiya Mahila Mandal, through its President, Nagpur and another

vs.

Nandkishore S/o Pandurang Rauika and others

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Mr. M. R. Johrapurkar, Advocate for petitioner.
Ms. T. H. Khan, AGP for respondent Nos.2 to 4.
Mr. Sudhir Malode, Advocate with Mr. A. M. Kukday, Advocate for respondent No.5.

CORAM : MANISH PITALE J.

DATE : 01/07/2022

Heard learned counsel for the parties.

2. By this petition, the petitioners i.e. original defendant Nos.1 and 2, have challenged order dated 07/02/2020, passed by the Court of 4th Joint Civil Judge Senior Division, Nagpur, whereby an application for amendment filed on behalf of the respondent No.1 i.e. the original plaintiff at Exh.152, was allowed.

3. According to the petitioners, the said amendment ought not to have been allowed. The

learned counsel appearing for the petitioners invited attention of this Court to the original plaint, prayers made therein, as also certain statements made by the respondent No.1 i.e. the plaintiff during recording of evidence. It was contended that the proposed amendment was nothing but an attempt to get over certain admissions given in cross-examination, which the Court below failed to appreciate.

4. On the other hand, learned counsel appearing for the contesting respondent No.1 submitted that no interference is warranted in the impugned order for the reason that the Court below correctly found that allowing the amendment would assist the Court in determining the real controversy between the parties. Most of the events that are referred to in the proposed amendment pertained to events that happened after filing of the suit and that therefore, in the interest of justice the impugned order may be confirmed.

5. This Court has perused original plaint. The respondent No.1 has sought decree of possession and a decree of mandatory injunction for handing over a specific area of land after removal of statue existing therein. There is reference to a Sale Deed executed in favour of the respondent No.1. A perusal

of the statements made in cross-examination of the respondent No.1 would show that particular facts have been elucidated on behalf of the original defendant Nos.1 and 2 i.e. petitioners herein. Perusal of the proposed amendment would show that it runs into as many as 08 paragraphs. It is claimed on behalf of the respondent No.1 that the proposed amendment is necessary for bringing on record subsequent events and to highlight issues that go to the very root of the matter.

6. A perusal of the impugned order would show that the Court below allowed the application, primarily for the reason that according to the Court below the respondent No.1 was stating events of January and May, 2019 and it is then observed that events that occurred during pendency of the suit between 2016 and 2019 were sought to be brought on record and since the basic structure is not altered and the proposed amendment appeared to be necessary for determining the real controversy between the parties, the same could be granted.

7. But a perusal of the proposed amendment would show that insofar as paragraph 10A is concerned, the respondent No.1 has indeed sought to place on record events that occurred in the year

2019, indicating attempts made for resolving the dispute amicably.

8. But, thereafter, in paragraph 10B, reference is made to events and documents from the year 1999 onwards and there is substance in the contention raised on behalf of the petitioner that the said paragraph is sought to be inserted to get over certain statements made in cross-examination by the respondent No.1. A perusal of paragraphs 10C to 10H would show that the respondent No.1 has sought to place on record certain events of the period 2016 to 2017, wherein he allegedly approached various authorities for seeking relief, but he was not successful.

9. This Court is of the opinion that insofar as paragraph 10C to 10H are concerned, they are of no significant value for assisting the Court below in deciding the pending suit and the real controversy. Insofar as paragraph 10B is concerned, this Court accepts the apprehension expressed on behalf of the petitioners i.e. original defendant Nos.1 and 2 that the said paragraph is sought to be inserted only to get over certain statements made in cross-examination by respondent No.1.

10. Insofar as paragraph 10A is concerned, this Court is of the opinion that the same can be permitted to be placed on record as it indeed refers to events of January and May 2019, pertaining to efforts made even by certain Authorities and Officials for finding an amicable settlement to the dispute. Therefore, this Court is convinced that the impugned order deserves to be interfered with and that the Court below erred in allowing the application Exh.152 in its entirety.

11. Accordingly, the Writ Petition is partly allowed.

12. The impugned order is modified to the extent that the application for amendment at Exh.152, is partly granted in order to permit the respondent No.1 i.e. the original plaintiff to insert proposed paragraph 10A in the plaint.

13. The amendment sought for placing on record paragraphs 10B to 10H is rejected.

14. With this modification of the impugned order, the writ petition is disposed of.

Digitally signed byRAVIKANT CHANDRAKANT KOLHE
Signing Date:06.07.2022 18:31

JUDGE