

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

WRIT PETITION NO. 3278 OF 2021

Maroti @ Marotrao Shankarrao Dawre Vs. Ganpat Dnyaneshwar Bhong and ors

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

Court's or Judge's orders

Mr. M.R.Joharapurkar, Advocate for petitioner

Mr. R.A.Bhandakkar, Advocate for the respondent Nos. 2 & 3

CORAM : AVINASH G. GHAROTE, J.

DATE : 25/08/2022

1] Heard Mr. Joharapur, learned counsel for the petitioner and Mr. Bhandakkar, learned counsel for respondent Nos. 2 and 3.

2] The petition challenges the order dated 23.10.2019 passed below Exh. 42, thereby rejecting the application under Order 6 Rule 17 of the CPC, which was filed at a stage before the issues are framed.

3] It is contended that after the filing of the written statement, the petitioner has been able to lay his hands on documents which indicate that the grand father of the petitioner had acquired title to the suit property by virtue of a sale-deed dated 9.1.1893 and therefore, this was necessary to be brought on record.

4] Mr. Bhandakkar, learned counsel for respondent Nos. 2 and 3 vehemently opposes the submission contending that the petitioner cannot be permitted to withdraw his admission and allowing the

amendment would result in changing the nature of the suit.

5] The impugned order merely rejects the amendment on the ground that the petitioner cannot be permitted to withdraw an admission. A perusal of the application for amendment (pg. 52) would indicate that it does not purport to delete any averment of the plaint but only substitutes certain years as indicated therein (pg. 63). What is material to note is that the suit is at a nascent stage and rejection of the application for amendment would merely drive the petitioner to file a separate suit.

6] It is a settled position of law that the multiplicity of litigation needs to be avoided, considering which since the application has been filed before the settlement of issues and the parties are already at lis in the present suit, it would be appropriate if the plaint is permitted to be amended and all disputes between the parties are decided in one suit, considering which the impugned order is hereby quashed and set aside and the application for amendment is allowed.

7] The petition is allowed in above terms. No costs

JUDGE

(3)

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