

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

WRIT PETITION NO. 3511 OF 2020

Manoj s/o Dadu Wasnik (Died)

1. Smt. Triveni wd/o Manoj Wasnik, aged about 47 years, Occ. Nil.
2. Shri Sameer s/o Manoj Wasnik, aged about 23 years, occ. Nil
3. Kum. Sanjeevani d/o Manpj Wasnik, Aged about 20 years, Occ. Education, All petitioners (1) to (3) are R/o Ambedkar Ward, Waruhi, Tah. Mohadi, Dist. Bhandara.
4. Smt. Prachi w/o Rahul Bodile, aged about 30 years, Occupation Nil, R/o Khat Road, Vill. Khokarla, Tah. & Dist. Bhandara.
5. Mrs. Sopiya w/o Ravi Nipane, aged about 28 years, Occ. Nil, R/o Chandani Chowk, Near Govt. Hospital, Nagpur, Tah. & Dist. Nagpur.

.... **PETITIONER**

// VERSUS //

1. Ku. Alkatai d/o Dadu Wasnik (@ Alka w/o Milind Meshram), Aged about 55 years, Occ. Nil, r/o Shastra Ward, Sonnuli road, Warathi, Tah. Mohadi, Dist. Bhandara.
2. Ku. Rashtragita d/o Dadu Wasnik, aged about 53 years, occ. Teacher, presently working at Zilla Parishad, Primary School, Piplas, Tah. Bhiwandi, Dist. Thane (Mumbai), Maharashtra.

3. Smt. Pushpa w/o Haridas Ramteke, aged about 59 years, Occ. Nil, R/o Warthi (Gandhi Ward), Tah. Mohadi, Dist. Bhandara.
4. Sou. Chaya Kishor Thaware, aged about 57 years, Occ. Nil, R/o Lakhandar Road, Wadsa, Tah. Wadsa (Desai Ganj), Dist. Gadchiroli.
5. Shri Kamlesh s/o Deodas Dongare, aged about 33 years, Occ. Labour,, r/o Nehru Ward, Warathi, Tah. Mohadi, Dist. Bhandara.

.... **RESPONDENT**

Shri S.P Kshirsagar, Advocate for the petitioners.
Shri H.P Lingayat, Advocate for the respondents.

CORAM : ROHIT B. DEO, J.
DATED : 03.03.2022

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petition is heard finally.

2. The petitioner is the defendant 4 in Regular Civil Suit 32 of 2002, which is instituted by the plaintiffs seeking decree of partition and other ancillary relief. The suit came to be dismissed by the Trial Court. In an appeal preferred by the plaintiffs, the Appellate Court relied on certain documents, which were produced for the first time in appeal, and reversed the decree of dismissal.

3. Aggrieved, the defendants approached this Court in Second Appeal 150 of 2018, which was allowed vide judgment dated 06.02.2020.

This Court noted that the Appellate Court could not have relied on the documents without affording an opportunity to the defendant to cross-examine the plaintiffs and that the provisions of Order XLI Rule 27 of the Code of Civil Procedure, were ignored. This Court remanded the matter to the Trial Court with liberty to the parties to adduce evidence.

4. The defendant 4 preferred an application under Order VI Rule 17 of Code of Civil Procedure, which is predicated on the assertion that it was during the appeal that certain stand was taken for the first time, and certain documents produced, and therefore, the written statement needs amendment. This application was dismissed on the premise that the trial has commenced. The Trial Judge has further observed that in view of the remand order, the scope of the trial is limited to the documents, which are already produced on record.

5. I am afraid, the learned Trial Judge completely misdirected himself. The fact that the remand order permit the parties to adduce evidence cannot be construed to mean that the parties are precluded from applying for amendment of the pleadings, if such an amendment is otherwise necessary, for effective adjudication.

6. Having heard the learned Counsel for the parties, and having perused the record, I am satisfied that the defendant 4 deserves an opportunity to amend the pleadings.

7. However, the learned Trial Judge is right in noticing that the suit is extremely old. It is in this view of the matter, that while passing an order of remand, this Court made the trial of the suit time bound.

8. The order impugned is set aside and the defendant 4 is permitted to amend the written statement as prayed. The needful shall be done in the next seven days, if necessary, by taking the case on board.

9. The plaintiffs may consequentially amend the plaint, if necessary, within the next seven days.

10. The Trial Court shall proceed with the trial immediately, and conclude the same within the next 90 days.

11. The petition is allowed in the afore-stated terms.

(ROHIT B. DEO, J.)

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