

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

WRIT PETITION NO. 6037 OF 2022

Khushal Kothiram Khobarkar

vs.

Shantabai wd/o Nilkanth Ashtankar 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. P. S. Sadavarte, and Mr. K. P. Sadavarte, Advocate for
petitioner.

CORAM : AVINASH G. GHAROTE J.

DATE : 10/10/2022

Heard Mr. Sadavarte, learned counsel for
the petitioner.

2. The petition challenges order dated 21.07.2022, passed below Exh.55 (page 101) whereby the application for amendment filed by the plaintiff as a consequence of the petitioner/defendant having amendment his written statement, has been allowed.

3. Mr.Sadavarte, learned counsel submits that the proposed amendment which is sought is not

consequential in nature and therefore ought not to have been allowed as what was permitted according to him by this Court in an earlier challenge to the application for amendment of the written statement filed by the petitioner in Writ Petition No.963 of 2019, was consequential amendment (page 54).

4. He further submits that the amendment which is now sought to be done is not consequential in nature, and also seeks relief of declaration that the plaintiffs were co-owners of the property in question and such declaration cannot be permitted.

5. Reliance was placed on *Bharat Petroleum Corporation Ltd. vs. Precious Finance investment Pvt. Ltd. 2007 (1) Mh.L.J. page no. 331*, which holds that application seeking amendment should offer sufficient and proper explanation mentioning the particular circumstances against which an amendment was sought to enable the Court to reach the conclusion that in spite of due diligence the applicant could not have raised the matter before the commencement of the trial.

6. Reliance was also placed on *Gurdial Singh and others vs. Raj Kumar Aneja and others (2002) 2 SCC 445*, which holds that new plea cannot be

permitted to be introduced under the guise of the consequential amendment.

7. In the instant case, the respondents had filed a suit for partition, separate possession and permanent injunction on the plea that the property was purchased by the father from his own funds and since he died intestate, the defendants who were the daughters had a right therein. The petitioner/defendant by Exh.48 amended his written statement by seeking to delete para 26 and adding para 26A raising a plea that considering the date of the birth of the defendant/petitioner and the purchase of the property on 30.03.1954 thereafter, subsequent to which the Hindu Succession Act, 1956 came into force on 17.06.1956, therefore, the daughters did not have any right in the suit property.

8. Pleas were also raised regarding non-applicability of the Hindu Succession (Amendment) Act 2005. This application was filed at the time when the affidavit of evidence was filed by the plaintiff/respondents and on account of the amendment being allowed, the stage reverted back to the pretrial stage and therefore, the question of applicability of the proviso to Order 6 Rule 17 become nonest, hence, *Bharat Petroleum Corporation Ltd.(supra)* relied by

Mr.Sadavarte, learned counsel for the petitioner became inapplicable.

9. In so far as the amendment claimed by virtue of Exh.55 is concerned, a perusal thereof indicates that it is in consequence to pleas raised by the petitioner in his written statement vide para 26A and 26AA, which placed substantive pleas regarding the status of the properties on record. It is thus apparent that amendment by virtue of Exh.55 is clearly consequential in nature, as it intends to refute what has been stated in the amended written statement regarding the nature of the suit property, the Hindu Succession (Amendment) Act, 2005 being attracted and the relief to which the daughters would be entitled as a result of such amendment. It is material to note that the right in the daughters stood recognized by virtue of the Hindu Succession (Amendment) Act 2005, which has been upheld by the Apex Court in **Vineeta Sharma vs. Rakesh Sharma and others (2020) 9 SCC 1** on account of which the amendment being consequential in nature has rightly been permitted by the Court below.

10. I do not see any reason to interfere in the impugned order. The petition is therefore without any merits.

11. Accordingly the writ petition is dismissed. No costs.

JUDGE