

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

WRIT PETITION NO. 5555 OF 2021

Pramod Chandrayya Gumfulwar and anr.

Vs.

Paikanna Chandrayya Gumfulwar and anr.

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

Court's or Judge's Orders.

Mr. V.N. Morande, Advocate for petitioners.

Mr. S.G. Karmarkar, Advocate for respondents.

CORAM : MANISH PITALE J.

DATE : 29.03.2022.

Although the office note shows that service on respondent No.2 is awaited, there is no dispute about the fact that the respondent No.2 is the original defendant No.4 and in the context of the present writ petition, he is only a profarma respondent. The respondent No.1 i.e. original plaintiff is really the contesting respondent, who is represented through counsel before this Court. Therefore, this writ petition is taken up for final disposal.

2. By this writ petition, the petitioners i.e. the original defendant Nos.2 & 3 have challenged order dated 22.10.2021 passed by the Court of Civil

Judge Junior Division, Chamorshi (hereinafter referred to as the 'trial Court'), whereby the application at Exhibit 92, moved by the petitioners for amendment of their written statement has been rejected.

3. Mr. Morande, learned counsel appearing for the petitioners submits that the petitioners intended to carry out only a consequential amendment, for the reason that the plaintiff i.e. respondent No.1 had amended his plaint seeking a decree of possession. It is submitted that thereafter, sometime in April 2021, the trial Court itself framed an additional issue on the question as to whether the plaintiff was entitled to recovery of possession of vacant suit land. In September 2021, the petitioner moved the aforesaid application, which ought to have been allowed in the interest of justice.

4. Mr. Karmarkar, learned counsel appearing for the contesting respondent No.1, on the other hand, submitted that the Court below had correctly noted that the application for amendment of the written statement was moved more than three years after the plaintiff had amended the plaint and that therefore, no interference is warranted in the impugned order.

5. A perusal of the impugned order shows that the trial Court has taken into consideration the additional issue framed in April 2021. Thereafter, it is also noted that the petitioners intended to carry out only a consequential amendment to their written statement. But, thereafter, the trial Court has focused only on the aspect that the application for permission to amend the written statement was moved about three years after amendment of the plaint and further that the suit itself was at the stage of arguments.

6. This Court is of the opinion that as per settled law, the Courts are supposed to be liberal insofar as granting permission for amendment of written statement is concerned. In the present case, admittedly the proposed amendment of the written statement is really of a consequential nature, for the reason that the plaint itself stood amended and a decree of possession is now sought by the plaintiff.

7. In view of fact that the additional issue pertaining to recovery of possession was framed only in April 2021 and the application for carrying out consequential amendment was moved by the petitioners in September 2021, the trial Court adopted a harsh approach in rejecting the application for amending the written statement.

8. In view of the above, this Court is of the opinion that the impugned order is unsustainable. Accordingly, the writ petition is allowed.

9. The impugned order is quashed and set aside. The application filed by the petitioners for amendment of written statement at Exh.92 is allowed in terms of prayer made therein.

10. The petitioners shall now carry out the amendment before the trial Court within two weeks from today. Thereafter, the trial Court shall proceed with the matter expeditiously and dispose of the suit within a period of three months from today.

JUDGE

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