

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

WRIT PETITION NO. 6502 OF 2017

Lilabai w/o Vijaykumar Nasawale -- Petitioner

Vs.

Shakuntalabai wd/o Sheshrao Tayade and -- Respondents
others

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

Court's or Judge's orders

Mr. R.N. Ghuge, Advocate for Petitioner
Mr. Chaitanya Kulkarni, Adv. h/f Mr. A.S. Deshpande,
Advocate for Respondent Nos. 13 and 14

CORAM : MANISH PITALE, J.

DATE : 06th JUNE, 2022

By this writ petition, the petitioner i.e. original plaintiff has approached this Court, challenging order dated 07/09/2017, passed by the Court of Civil Judge, Senior Division, Washim, whereby application at Exh.36, filed by the petitioner had been rejected. The said application was a composite application seeking relief for amendment of plaint under Order 6 Rule 17 of the Civil Procedure Code (CPC)

and for addition of certain defendants under Order 1 Rule 10 of CPC.

2. The Court below appears to have rejected the application on the ground that the petitioner ought to have approached for such reliefs earlier and also because the amendment sought to be introduced concerns vague pleadings pertaining to certain properties added in the prayer clause for seeking relief.

3. The petitioner has filed a suit for partition, separate possession and for declaration. Initially, only two persons were added as defendants. It is the case of the petitioner that when written statement was filed on behalf of the original defendant that she became aware about certain transactions that had taken place in respect of certain properties, which necessitated adding further defendants to the suit and for adding a prayer by way of amendment seeking declaration in respect of documents executed in favour of the persons proposed to be added as defendants in the suit.

4. The learned counsel for the petitioner emphasized on the fact that although issues were framed, the trial was yet to commence, for the reason that even the affidavit-in-evidence

on behalf of the petitioner i.e. original plaintiff was yet to be filed. It is submitted that the Court below ought to have adopted a liberal approach and application at Exh.36, ought to have allowed.

5. On the other hand, learned counsel for the contesting respondents submitted that the proposed amendment was vague, with no description of property in question and that cogent reason was not put-forth on behalf of the petitioner for adding defendant Nos.3 to 6.

6. This Court has considered the material on record. It is significant that an earlier application for amendment at Exh.30, was allowed by the Court below, whereby certain properties that remained to be added, were permitted to be placed on record in the proceedings. A perusal of the written statement filed on behalf of the original defendant shows that there is indeed reference made to certain transactions and documents, whereby some of the properties were allegedly transferred in favour of the persons proposed to be added as defendants in the suit. The petitioner could have sought the relief when the earlier application for amendment was moved. But, a perusal of the application at Exh.36 does show that reasons for adding proposed defendants were indeed stated and the proposed

amendment is for addition of a further prayer in the suit seeking declaration in respect of documents said to have been executed in favour of the persons proposed to be added as defendants in the suit.

7. This Court is of the opinion that for a comprehensive decision in the matter and the issues that obviously arise between the parties, in the backdrop of the nature of suit filed by the petitioner, the Court below ought to have allowed the application at Exh.36. Allowing the said application would assist the Court below in deciding such issues that arise between the parties in a comprehensive manner. In fact, the proceedings before the Court below would have been expedited, if the application was to be allowed. Record shows that while issuing notice on 22/02/2018, this Court granted interim stay of the proceedings in the Court below.

8. This Court is convinced that the impugned order deserves interference. Accordingly, the writ petition is allowed. The impugned order is quashed and set aside.

9. Application at Exh.36 is allowed in its entirety. The petitioner shall carry out necessary amendment before the Court below within a period of three weeks from today.

10. Proceedings before the Court below are expedited.

JUDGE