

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

WRIT PETITION NO. 7920 OF 2019

Deepak S/o Sundarlal Murarka and another -- petitioners

Vs.

Tolaram Madanlal Murarka (Dead by L.Rs.) -- Respondents
and others

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

Court's or Judge's orders

Mr. U.J. Deshpande, Advocate for petitioners
Mr. M.G. Sarda, Advocate for Respondent No. 3(i)

CORAM : MANISH PITALE, J.

DATE : 08th JUNE, 2022

By this writ petition, the original plaintiff has approached this Court, challenging order dated 16/10/2019, passed by the Court of 4th Jt. Civil Judge, Senior Division, Akola, (hereinafter referred to as "Trial Court"), whereby an application for amendment of plaint at Exh.272, has been rejected.

2. In the present case, the petitioners has filed a suit for partition, separate possession and other reliefs against the original defendants. The suit has been pending for a long time and at the stage when the application for amendment was moved, the evidence of the plaintiff was being recorded.

3. The proposed amendment sought to place on record pleadings pertaining to subsequent events, which according to the

petitioners has a crucial bearing on the issues to be decided in the aforesaid suit. It was claimed that certain admissions were made on affidavits by some of the defendants, which were necessary to be placed on record before the Court below to facilitate the petitioners to raise the aspect of estoppel against the said defendants. It was claimed that such admissions were contrary to what was pleaded on behalf of such defendants before the Trial Court.

4. The aforesaid application was opposed by the defendants.

5. The Trial Court considered the proposed amendment and found that although the proposed amendment could neither be said to be malafide nor it could be said to be causing any prejudice to the defendants, since the suit was pending for a long period of time and allowing such amendment might lead to further delaying the proceedings, the application was rejected.

6. The petitioners filed the present writ petition, wherein notice was issued on 03/12/2019 and ad-interim stay of the proceedings before the Trial Court was granted. The interim stay has continued till date.

7. Today, when the petition is called out for hearing, it is found that the respondent No. 3(iii) is yet to be served, but, the learned counsel appearing for the respondents submitted that he has instructions to waive notice on behalf respondent No.3 (iii), as he is also appearing for the said respondent before the Trial Court.

8. Mr. U.J. Deshpande, learned counsel for the petitioners submitted that the proposed amendment was based on subsequent events, which has a crucial bearing on the proceedings before the Trial Court and since the petitioners sought to bring on record subsequent events and relevant documents, the application for amendment ought to have been allowed. It was submitted that although the Trial Court found in favour of the petitioners on certain aspects of the matter, the application was rejected only for the reason that the suit has been pending since the year 1990.

9. On the other hand, Mr. Sarda, learned counsel appearing for the respondents submitted that the test to be applied in the present case was as to whether the amendment sought on behalf of the petitioners was necessary for a proper and effective adjudication of the matter before the Trial Court. It was submitted that the documents on which the petitioners sought to place reliance could be brought on record during the course of evidence and amendment of pleadings on the part of the petitioners was superfluous. It was further submitted that if the amendment was to be allowed, it would lead to delay in disposal of the suit, because the consequential amendment sought by the defendants would further delay the proceedings before the Trial Court.

10. This Court has considered the contentions raised on behalf of the rival parties. A perusal of the proposed amendment shows that although it appears to be unnecessarily verbose, crucial subsequent events are sought to be brought on record, particularly

affidavits filed before this Court in a proceeding arising between the parties, wherein certain statements have been made by some of the defendants. It cannot be said that the amendment sought on behalf of the petitioners was unnecessary or superfluous, because the proposed amendment seeks to place on record the subsequent proceedings and events leading to certain affidavits being placed on record before this Court, which may have a bearing on the controversy pending between the parties in the Trial Court.

11. It is interesting to note that the Trial Court, even in the impugned order did take note of the nature of affidavits that were filed by some of the defendants in the proceedings before this Court and it was found that amendment sought on behalf of the petitioners could not be said to be either malafide or causing any prejudice to the defendants. In fact, this Court is of the opinion that the proposed amendment is more in the nature of elaboration of the pleadings already existing and an attempt on the part of the petitioners to place on record documents that have come into existence during the pendency of the suit. This Court is of the opinion that amendment in the pleadings was necessary to effectively facilitate the petitioners to putforth their contentions regarding estoppel and other such aspects that they proposed to raise against the defendants. Therefore, it is found that the Trial Court erred in rejecting the application for amendment, only because of the anxiety that the proceedings would be further delayed, in the backdrop of the fact that the suit was instituted as far back as in the year 1990.

12. Nonetheless, there is substance in the contention raised on behalf of the respondents that consequential amendment would have to be carried out in the written statements on behalf of the defendants, which may lead to further delay in the proceedings. The same can be taken care of by giving appropriate directions, while allowing the present writ petition.

13. In view of the above, the writ petition is allowed. The impugned order is quashed and set aside. The application for amendment at Exh.272 filed on behalf of the petitioners is allowed. The petitioners shall carry out amendment within two weeks from today. The defendants are permitted to carry out consequential amendments in their written statements within a period of four weeks from the petitioners carrying out amendment in the plaint.

14. Considering the fact that the suit was instituted as far back as in the year 1990, the Trial Court is directed to expedite the proceedings and to dispose of the suit within a period of one year from today.

JUDGE