

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1092 OF 2023

Shantabai Marotrao Nalge and others .. Petitioners

Versus

Bhagyashree Satyanarayan Nalge
and others .. Respondents

Shri Mrigesh D. Narwadkar, Advocate for the Petitioners.
Smt. G. L. Deshpande, A.G.P. for the Respondent Nos. 4 and 5.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 16TH FEBRUARY, 2023.**

FINAL ORDER :

. The substantial challenge in the petition is to the impugned order dated 06th October, 2022, whereby the respondent Nos. 1 to 3's application for amendment of the plaint came to be allowed. Learned Counsel for Petitioners has confined his arguments to the order dated 6th October, 2022.

2. Special Civil Suit No. 49 of 2019 was filed by the respondent Nos. 1 to 3 seeking a declaration in respect of alleged Will deed executed by one Maruti Baburao Nalge, who was father-in-law of the respondent No. 1 in favour of the petitioners as null and void in respect of the properties which were mentioned in the plaint and for cancellation and setting aside the alleged Will deed. The suit filed, also sought a declaration that the transfer effected in the revenue record is null and void and for relief of perpetual injunction restraining the petitioners from alienating or creating third party rights in the property or for

withdrawing any compensation amount from the Sub Divisional Officer, Nanded in respect of land Sy. Nos. 12, 13, 14 and 17.

3. The roznama produced on record by the learned counsel for the petitioners shows that on 23rd October, 2019 issues were framed. On 22nd January, 2020, affidavit of evidence was filed by respondent Nos. 1 to 3. Subsequently on 29th August, 2022, an application came to be filed under Order VI Rule 17 of the Code of Civil Procedure (for short “Code”) for amendment of the plaint. It was stated in the application that after filing of the proceedings, certain subsequent events had taken place in respect of the property and as such the same are necessary to be brought on record. The application came to be allowed by the Trial Court with the observation that there is no new cause of action noted and the amendment is by virtue of subsequent development. It was also observed that the matter is at initial stage and evidence is not yet recorded and as such no prejudice will be caused to the other side.

4. Heard Mr. Narwadkar learned counsel appearing for the petitioners. Learned counsel for the petitioners submits that the findings of the Trial Court are erroneous in as much as the roznama produced on record clearly shows that issues were framed and the amendment is post trial amendment and could not have been permitted without the compliance of the provisions of Order VI Rule 17 of the Code. He would further submit that the proposed amendments are not related with the Will of the deceased Marotrao Nalge and are not necessary for deciding the issue in controversy.

5. Considered the submissions of Mr. Narwadkar. The application for amendment came to be filed admittedly after the Affidavit in lieu of examination in chief was recorded. It is not disputed by the learned counsel for Petitioners that the proposed amendments are the subsequent events which have taken place during the pendency of the suit. At the stage of considering the application for amendment the merits of the amendment are not required to be gone into. In the present case by the proposed amendment, the respondent Nos. 1 to 3 seeks to bring on record the subsequent development of the acquisition of the part of the suit property and averments as regards the proceedings which were conducted before the Special Land Acquisition Officer and the compensation which was awarded. The proposed amendment also seeks to add to the prayer clause a declaration of having equal share in the property which was forming part of the Will deed and for partition and separate possession of the property as well as the share in the compensation amount and for the recovery of accumulated rent received in respect of the subject property. Perusal of the proposed amendment would show that the amendment is in consonance with the pleadings and factual background is already set out in the plaint. In the original suit the respondent Nos. 1 to 3 sought a declaration that the alleged Will deed executed is null and void and is brought up in respect of the properties set out therein. It is trite that without consequential relief being sought the decree of declaration is unexecutable. The proposed amendments, in my opinion, are necessary for the effective adjudication of the proceedings. The original suit sought various reliefs in respect of the subject property which formed part of the alleged Will of Marotrao Nalge. During the pendency of the proceedings, as part of the

subject property was acquired, further reliefs in respect of share in the compensation is sought. It may be stated here that the observation of the Trial Court that the matter is at initial stage and evidence is not yet recorded is contrary to the roznama which is produced on record and same is clearly erroneous. However, considering the nature of proposed amendments, it cannot be said that the amendments are not necessary for adjudication of the matter. The proposed amendments are sought by virtue of subsequent developments and no fault can be found with the order of the Trial Court dated 06th October, 2022.

6. In the light of the above, no interference is called for in the impugned order. Writ petition is devoid of merits and same stands dismissed. No costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Feb. 23