

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

WRIT PETITION NO.952 OF 2018

(RAGHUNATH ZUNJARUJI MADAVI...VS.. DONUJI BAIJU MADAVI)

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

Court's or Judge's orders

Shri R.D.Wakode, Advocate for Petitioner.
Shri N.R.Bhishikar, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 22, 2023.

1. Heard.
2. The order dated 05/09/2017, passed below Exh.54, by the Civil Judge Junior Division, Dhanora in Regular Civil Suit No. 1 of 2017, rejecting application for amendment filed under Order 6 Rule 17 of the Code of Civil Procedure, is under challenge in this writ petition.
3. The petitioner is the original defendant in a suit filed by the respondent for declaration and possession. After commencement of the trial, the petitioner filed an application for amendment under Order 6 Rule 17 of the Code of Civil Procedure raising a ground as regards limitation. The said application was strongly opposed by the respondent by filing reply to it on 04/09/2017. The learned trial Court rejected the application Exh.54 for amendment on two counts, namely:

- (1) The application was moved after commencement of the trial; and
- (2) The said amendment is not necessary.

The said order dated 05/09/2017 is subject matter of the present writ petition.

4. The learned counsel for the petitioner submits that the point of limitation was sought to be added by way of the proposed amendment and therefore, though the application for amendment was moved after the commencement of the trial, the learned trial Court ought not to have rejected. He, therefore, submits that the rejection is erroneous.

5. He further points out that after rejection of the application for amendment, the plaintiff moved an application for amendment, however, in the similar facts and circumstances the application of the plaintiff was allowed. Whereas, the plaintiff brought on record some new facts by way of the amendment. It is therefore, submitted that the learned trial Court applied two different criteria for the plaintiff and the defendant.

6. The learned counsel for the respondent submits that taking the advantage of some admissions given in the cross-examination, the application came to be moved and therefore, the learned trial Court has rightly

rejected it. It is submitted that the application of the plaintiff was allowed considering that the amendment sought by the plaintiff was necessary, whereas the application of the petitioner was rejected on the ground that the amendment sought by the petitioner is not necessary for the decision in the suit. He, accordingly submits that no error has been committed by the learned trial Court in rejecting the application for amendment filed by the petitioner.

7. I have perused the record and the impugned order.

8. The proposed amendment says that the plaintiff got the knowledge about the Will Deed within one to two months from the death of Devaji on 15/01/2010 and therefore, the suit is barred by limitation.

9. From the nature of the amendment it can be seen that the petitioner did not seek to bring any new facts on record, but he wanted to raise ground as regards limitation which goes to the root of the matter.

10. In the circumstances, I am of the opinion that the learned trial Court has committed error in rejecting the application. Accordingly, I pass the following order:

- i) The writ petition is allowed.

- ii) The impugned order dated 05/09/2017, passed below Exh.54, by the Civil Judge Junior Division, Dhanora in Regular Civil Suit No. 1 of 2017 is hereby quashed and set aside and thereby the application Exh.54 for amendment is allowed.

The Writ Petition is **disposed of** accordingly.
No order as to costs.

JUDGE

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