



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

WRIT PETITION NO.821/2019

Sau. Bhu-Laxmi W/o Ashok Mahagaonkar,
aged about 30 Yrs., Occ. Household,
R/o Mandwa, Tah. Korpana,
Dist. Chandrapur.

... Petitioner

- Versus -

1. Smt. Laxmibai Wd/o Shivram Gyagalwar,
aged about Major Yrs., Occ. Household,
R/o Mukudban, Tah. Zari Jamni,
Dist. Yeotmal.
2. Virangana Steel Ltd.,
through its site In-charge, Mukudban,
Tah. Zari Jamni, Dist. Yaeotmal.
3. M/s. B.S. Ispat Ltd.,
through its Mine Manager
at Mukutban, Tah. Zari-Jamni,
Dist. Yavatmal.
4. Western Coalfields Ltd.,
through its Agent/Manager at
Mukutban, Tq. Zari-Jamni,
Dist. Yavatmal.

(petition is dismissed against
respondent Nos.3 and 4)

... Respondents

Mr. N.P. Lambat, Counsel for the Petitioner.

CORAM: MRS. VRUSHALI V. JOSHI, J.

DATE OF RESERVING THE JUDGMENT : 20.10.2023

DATE OF PRONOUNCING THE JUDGMENT : 3/11/2023

JUDGMENT

Heard the learned counsel for the petitioner. None for the respondent Nos.1 and 2 though served. The petition is already dismissed against respondent Nos.3 and 4.

2. **Rule.** Rule made returnable forthwith.

3. The petitioner has challenged the order dated 12.12.2018 passed by the Civil Judge, Senior Division passed below Exh.125 rejecting the application for amendment and thereafter the application filed to review the order which was rejected on 5.1.2019.

4. The petitioner is the original plaintiff. She has filed the civil suit before the Civil Judge, Senior Division, Nagpur. Earlier the Regular Civil Suit was filed at Zari-Jamni. The plaint was returned and the civil suit was filed by the petitioner before Civil Judge, Senior Division. In special civil suit which was filed in the year 2010

issues were framed and the evidence of both the parties was closed. After closing of the evidence of both the parties the petitioner has moved an application for permission to adduce the evidence which was allowed. Thereafter after filing the evidence on affidavit of one Krushna Shriram Gawande the petitioner has filed application for not pressing said evidence which was rejected. During this period the plaintiff has filed the application for adding parties as defendant Nos.3 and 4 which was allowed. The parties were added as according to plaintiff, defendant Nos.3 and 4 have acquired the suit property. The defendants 3 and 4 have filed their written statement and denied that they have acquired the property and they have stated that they do not wish to acquire or purchase the property.

5. The petitioner by way of amendment seeks to add pleading for grant of possession of the property from defendant No.1 and prayer for partition and if the decree of partition is allowed, to appoint the Court Commissioner for giving possession of the said property.

6. The additional issues were framed on 18.8.2018. One of the issue was about the entitlement of the partition and possession. The trial Court has rightly considered that the property is an agricultural land and there is no question of appointing the Court Commissioner for partition of the suit property. The relief which the petitioner wants to claim through amendment is also already claimed as separate possession is incidental to the relief of partition. As the petitioner has stated that due to subsequent events she wants to amend the plaint but she has claimed the relief against defendant No.1 only. There is no question of subsequent event after adding defendant Nos.3 and 4 who have already denied that they have acquired property and denied possession. Considering the nature of suit and nature of amendment, at the stage when the evidence of both the parties were closed the trial Court has rightly rejected the application.

7. The subsequent application was filed by the petitioner plaintiff to review the order rejecting said application. The reason given by the petitioner is that without giving opportunity of being heard the application for amendment was decided. The learned trial Court has considered the application and contents in the application and passed the order. There is no any error apparent on the face of record. Therefore, the trial Court has rightly rejected the review application. The suit is more than 10 years old. The plaintiff is delaying the civil suit by filing such applications. As the trial Court has rightly considered the amendment application and rejected the application for amendment and also the review application the interference at the hands of this Court is not required. The petition is dismissed. No costs.

(MRS. VRUSHALI V. JOSHI, J.)