



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

WRIT PETITION NO.1421 OF 2020

Maya W/o Purushottam Charbhe .Vs. Haldiram Foods International Ltd., through its
Director Shri Rajendrakumar S/o Shivkisanji Agrawal

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.M. Nafde, Advocate for petitioner.

Shri M.M. Kalar, Advocate for respondent No.1.

Shri M.R. Johrapurkar, Advocate for respondent No.2.

CORAM : ANIL S. KILOR, J.

DATED : 18/10/2023

1. An application moved by the defendant No.5 under Order 6 Rule 17 of the Code of Civil Procedure for amendment in Regular Civil Suit No.162 of 2009 filed by the respondent No.1 herein for specific performance, came to be rejected vide impugned order dated 23.01.2020 passed by the 11th Jt. Civil Judge Sr. Dn., Nagpur, the same is under challenge in this petition.

2. It is the case of the petitioner that, the original defendant No.2 in his written statement claims the title over the suit property on the basis of Will executed by the original owner Sewakram. However, as no document namely the Will deed was produced on record, an application to produce the said document was filed which came to be rejected vide order passed below Exh.153. Thereafter, when the copy of the Will was first time

produced during the evidence of the defendant No.2, the application for amendment was filed on 18.12.2019 and thereby, the petitioner sought to bring on record the suspicious circumstances relating to the Will. The said application came to be rejected vide order below Exh.179. The learned trial Court while rejecting the application has categorically observed in the order particularly in paragraph-11 that, no relief claimed by any party on the basis of Will.

3 The above referred observations of the learned trial Court makes it clear that there is no issue in respect of validity of the Will involved in the Special Civil Suit No.162 of 2009. Even otherwise, the suit is for specific performance filed by the respondent No.1 against the petitioner and the respondent Nos.2 to 4.

4. It has come on the record that at the first time, the said document was produced by the original defendant No.2 during his evidence in the year 2019 and immediately thereafter, the application for amendment was filed. Therefore, though there is a due diligence in moving the application however, considering the observation that there is no relief claimed by any party on the basis of Will, the application came to be rejected, I am of the opinion that, the purpose would be served if the liberty is granted to the petitioner to raise the challenge to any such finding if any

made as regards validity the Will despite no relief is claimed by any party on the basis of the Will, in the appeal.

5. Accordingly, the writ petition is **disposed of** with liberty as referred herein above.

6. The trial Court is directed to expedite the suit.

JUDGE