



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

Writ Petition No.986 of 2020
GOPAL ATMARAM GHENGARE
VS
WAMAN VITHU AWACHAT

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

Court's or Judge's Order

Shri A.A. Dhawas, Advocate for the Petitioner/s
Ms (Dr) R.S. Sirpurkar, Advocate for the respondent-sole

CORAM : ANIL S. KILOR, J.
DATED : 12.12.2023

1. Heard.
2. In this petition, the order below Exh.58 passed by Jt. Civil Judge Junior Division, Warora in Regular Civil Suit No.56 of 2018, rejecting the application for amendment to the written statement filed by the defendant, is under challenge.
3. It is the case of the defendant that the plaintiff sold out the suit property to one Arjun Ajabrao Thate on 12.05.2004 and on the same day, the plaintiff handed over the possession to Arjun Thate and subsequently, on 09.05.2005 Arjun Thate sold out the suit property to the defendant and handover the possession of the suit property.
4. By way of proposed amendment, the defendant is claiming that after 09.05.2005, he is in permissive possession of the land in dispute.

5. In the written statement, it is not the case of the defendant that he is in permissive possession of the suit land. The written statement was filed on 27.04.2018 and facts stated in the application for the proposed amendment are admittedly not relating to the subsequent period i.e. after filing of the written statement but it relates to the period prior to filing of the written statement.

6. The amendment application was moved by the defendant at the stage of cross-examination of the plaintiff i.e. after commencement of the trial. In the application, there are no pleadings as regards due diligence in compliance with Proviso (ii) of the Rule 17 of Order VI of the Code of Civil Procedure. The only explanation given by the defendant was that, while preparing the case for cross examination, it was realized that such amendment is necessary and the defence as regards the permissive possession needs to be raised, however, there are no pleadings as regards due diligence.

7. Moreover, the learned counsel for the respondents has pointed out that after the impugned order was passed, the petitioner approached to this Court by filing the present written petition and obtained stay in terms of prayer clause (3) i.e. stay to the proceedings before the trial Court and in last three years i.e. after filing of the present writ petition, he made construction over the suit property. It is therefore, submitted that the only purpose for amendment was to delay the time bound matter, which was made time bound by this Court in the earlier round of litigation and to change the nature of the suit property.

8. The respondent/plaintiff therefore, opposes the application on the ground that the amendment sought by the defendant is not *bona fide*.

9. The learned counsel for the petitioner, by relying upon the judgment of the Hon'ble Supreme Court of India in the case of *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another*¹, submits that an amendment ought to have allowed by the trial Court, as it is required and necessary.

10. In the above referred backdrop, I have gone through the case of *Life Insurance Corporation of India* (supra) and according to me, it will not help the petitioner in the present matter.

11. In absence of pleadings in respect of due diligence, it would cause prejudice to the other side if the amendment is allowed and since the amendment would change the nature of the suit, the amendment needs to be dis-allowed.

12. In the circumstances, I am of the opinion that no case is made out by the petitioner to intervene with the impugned order. Accordingly, the writ petition is **dismissed**.

[ANIL S. KILOR, J.]