

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1084 OF 2022

(Rajesh Ramesh Agrawal Vs. Sau. Anita @ Aradhana Anupji Murarka & Ors.)

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

Court's or Judge's orders.

Shri Akshaya Sudame, Advocate for the petitioner.
Shri Sawan Alaspurkar, Advocate for respondent No.1.

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CORAM : ANIL S. KILOR, J.
FEBRUARY 28, 2023.

The order dated 1/2/2022 passed by the Joint Civil Judge, Senior Division, Amravati below Exh.46, allowing the application for amendment to the plaint moved by respondent No.1/ original plaintiff, is under challenge in the present Writ Petition.

2] The petitioner is the original defendant No.1 in a suit filed by respondent No.1/ original plaintiff for partition. In the said suit, the plaintiff filed an application below Exh.46 under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint, which application was opposed by the petitioner by filing reply. The learned trial Court, after hearing both the parties and recording reasons, allowed the application vide order dated 1/2/2022, which is under challenge in the present Writ Petition.

3] Shri Akshaya Sudame, learned Counsel for the petitioner submits that both the will deeds, i.e., the will deed dated 5/11/1979 executed by one Gulabibai

and the will deed dated 1/1/1980 executed by one Baldeoji Agrawal, are the registered will deeds and that the will deed dated 1/1/1980 was the subject matter of the suit bearing Regular Civil Suit No. 170/1983, wherein the validity of the said will deed was upheld. It is therefore submitted that now the challenge to the said will deed cannot be re-opened by way of an amendment.

4] On the other hand, Shri Sawan Alaspurkar, learned Counsel for respondent No.1 opposes the present Writ Petition on the ground that the argument, which is advanced before this Court as regards the validity of the will deed dated 1/1/1980 was upheld in the Civil Suit, was not argued before the trial Court. He further submits that even the documents which are filed before this Court along with the Writ Petition were not filed before the trial Court, and therefore, the order passed by the trial Court cannot be faulted with for not considering the said documents.

5] In the light of the rival contentions put forth on behalf of both the parties, I have perused the Writ Petition, the documents filed along with the Writ Petition, the reply filed by respondent No.1 and the impugned order.

6] It appears that though the argument, as regards the will deed dated 1/1/1980 has attained finality, was not made before the trial Court while opposing the application for amendment, the said ground is raised in the reply.

7] In absence of any such argument advanced before the trial Court, the trial Court had no occasion to examine and test the said argument on the touchstone of settled law.

8] Even otherwise, the petitioner can agitate the said ground at an appropriate stage. It is not the case of the petitioner that because the amendment is allowed, now the petitioner cannot raise all these points and he is remediless.

9] The learned Counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of *Revajeetu Builders And Developers Vs. Narayanaswamy And Sons And Others [(2009) 10 SCC 84]*, wherein the Hon'ble Supreme Court had an occasion to consider the factors to be taken into consideration while dealing with the application for amendment. In paragraph 63 of the said judgment, the Hon'ble Supreme Court has held thus :

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

10] Considering the factors above referred, I do not find that any error is committed by the learned trial Court, particularly when the point of limitation was not argued before the learned trial Court.

11] In the circumstances, as no perversity is pointed out in the impugned order, I do not find any merit in the Writ Petition. It is accordingly dismissed.

(JUDGE)

Sumit