



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

WRIT PETITION NO.1713 OF 2020

Vilas S/o Rajanna Veginwar .Vs. Shankar S/o Rajanna Veginwar and others

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

Court's or Judge's Order

Shri Rohit Joshi, Advocate for petitioner.

Shri A.A. Dhawas, Advocate for respondent.

CORAM : ANIL S. KILOR, J.

DATED : 23/08/2023

1. Heard.

2. The petitioner is the defendant in Regular Civil Suit No.222 of 2008 filed by the respondent/plaintiff for perpetual and mandatory injunction. The petitioner and the respondent Nos.1 and 2 are real brothers. The application moved by the plaintiff i.e the respondent No.1 for amendment came to be allowed vide impugned order dated 06.01.2020 passed by the 2nd Jt. Civil Judge, (Sr. Dn.), Chandrapur, which is the subject matter of the present writ petition.

3. Admittedly, in this matter, the suit was commenced on 21.08.2013 and thereafter, when the matter was fixed for judgment, the learned trial Court recasted the issue and fixed the matter for evidence and at that stage, the plaintiff filed an application for amendment seeking to add

prayer clause (AA) and Paragraph 8-A to the plaint, which reads thus:

“8A. However, the nature of contest put forth by Defendant No.1 and his conduct so far has made the plaintiff to come to the conclusion that it is not in the interest of parties to keep the suit property joint. Hence, Plaintiff claims partition and separate possession of his 1/3rd share in the suit property. The main relief claimed is for partition and separate possession. However, by way of abundant caution, the plaintiff also seeks the relief of declaration that he has 1/3rd share in the suit property.”

“AA. Grant a declaration that the plaintiff has 1/3rd share in the suit property and a decree for partition and separate possession of plaintiff's 1/ 3rd share in the suit property.”

4. Though the learned trial Court has found that the application was filed at belated stage and after commencement of the trial, it was allowed on the ground that, it will avoid multiplicity of proceeding.

5. After going through the proposed prayer clause (AA), it can be seen that, the plaintiff is now seeking 1/3rd share in the suit property with decree for partition and separate possession.

6. In the circumstances, I am of the opinion that, the learned trial Court has rightly held to the extent that, if the amendment is rejected, it would lead to multiplicity of proceeding and to avoid the same, the amendment was allowed.

6. In the circumstances, I do not find any error committed by the learned trial Court in allowing the application for amendment.

Accordingly, the writ petition is **dismissed**.

JUDGE