



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

WRIT PETITION NO.5456 OF 2022

(VISHNU SHALIKRAM WATH ..VS.. BHOJRAJ KISAN GHODE & OTH.)

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

Court's or Judge's orders

Shri Uday A. Gosavi, Advocate for Petitioner.
Shri D.P.Thakre, Addl.G.P. for Respondent Nos. 3 and 4.

CORAM : ANIL S. KILOR, J.
DATED : SEPTEMBER 26, 2023.

1. Heard.
2. The petitioner filed a suit for declaration and permanent injunction and thereby prayed for following reliefs :

“i) Declare the fraudulent act on the part of the defendant no 1 and 2 for withdrawing the compensation amount from defendant no.3 and 4 be declared as null and void.

ii) the defendant no.4 be restrain permanently from disbursing the claim compensation amount in favour of defendant no.1 and 2 in respect of the acquisition of the property of Mauja -Khairi Dhalgaon in respect of khasra no as mentioned para ___ of the plaint.

iii) Permanently restrain the defendant no.1 and 2 from claiming the compensation amount exclusively in respect of the suit properties as mentioned in the schedule of the plaint.

iv) grant any other relief as this honble court deems fit and proper.”

3. The above referred prayers were made in view of the pleadings made in the plaint and the relevant pleadings made in para 11 read thus :

“11] It is further submitted that it is therefore, necessary to declare that the plaintiffs have got their equal share in 1/3rd equal share of deceased Janabai and deceased Shalikram. Also, necessary to declare that so far as equal share of deceased Jankabai is concerned, who is sister of defendant no.1 an2, the plaintiffs are also entitled for equal share of deceased Jankabai in 1/3rd equal share of deceased Kisan Ghode. That in short the plaintiffs are entitled for about 12 acres of land i.e. towards the share of deceased Shalikram who is father and deceased Jankabai who is mother of the plaintiff. That the plaintiff have got every right to claim equal share of their mother deceased Jankabai from and out of 1/3rd equal share of deceased Kisan Ghode.”

4. Subsequently, on receiving the knowledge that the amount has already been disbursed, the amendment application was filed under Order VI Rule 17 of the Code of Civil Procedure was made. The said application came to be rejected on the ground that it would change the nature of the dispute and secondly the application was moved after commencement of the trial.

5. After going through the amendment application, I do not find that the findings recorded by the

trial Court that the amendment would change the nature of dispute, is correct. The learned trial Court has committed an error in considering the stage of framing of issue as commencement of trial. Admittedly, recording of evidence is not yet started and therefore, it cannot be said that the trial has commenced.

6. Moreover, considering the proposed amendment, it can be said that it would not change the nature of dispute.

7. It is a settled law that the Court shall adopt lenient approach while considering the application for amendment before the commencement of the trial. In the circumstances, I am of the opinion that the application Exh.30 needs to be allowed by setting aside the order dated 27/09/2021.

8. As far as rejection of application Exh.31 is concerned, it was rejected because Exh.30 was rejected and also on the ground that the trial has commenced. This Court has already observed that the stage of framing of issue cannot be considered as the trial has commenced.

9. In that view of the matter, I am of the opinion that as the application Exh.30 is allowed the matter as regards application Exh.31 needs to be remanded back to consider the same afresh.

10. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 27/09/2021 passed below Exh.30 by 18th Joint Civil Judge Senior Division, Nagpur in Special Civil Suit No.1394 of 2017 is quashed and set aside and thereby application Exh.30 is allowed.
- iii) The impugned order dated 27/09/2021 passed below Exh.31 by 18th Joint Civil Judge Senior Division, Nagpur in Special Civil Suit No.1394 of 2017 is quashed and set aside and thereby the application Exh.31 is remanded back to the learned trial Court for deciding it afresh, on its own merits, after hearing both the parties.

The Writ Petition is **disposed of** accordingly.

No order as to costs.

JUDGE