

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

Writ Petition No.3566/2021

Yashwant and another V Smt Nandini

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. N.S. Bhelkar, Adv. for petitioner.

Mr. S. Malode, Adv. for respondent.

CORAM : AVINASH G GHAROTE, J.

DATE : 16-01-2023

The petition questions the order dated 22-09-16 by which the application for amendment of the plaint filed at the stage of cross examination of the defendant has been allowed by the impugned order dated 23-02-21 (pg 54). It is contended by Mr Bhelkar, learned Counsel for the petitioner that though the petitioner has independently acquired property by the sale deeds dated 9-12-14 and 12-12-2014 which was even prior to the filing to the suit in the year 2015. The application has been allowed which was filed at the stage of cross examination of the defendant. Except for the reason, that there was a change of counsel at the stage of evidence there is no reason given for such an application being moved and therefore the impugned order does not satisfy the requirement of the provision of Order 6 Rule 17 of the Code of Civil Procedure (CPC) cannot be sustained.

2. Mr Malode, learned Counsel for the respondent in justifying the impugned order, says that after the change in counsel appropriate instructions were received as a result of which the sale deeds has come to the knowledge and therefore the amendment was sought and has been rightly allowed.

3. It is not disputed that the sale deeds dated 9-12-14 and 12-12-14 have already been questioned in the original plaint which was filed on 7-7-15 (pg 14). The present amendment seeks to bring the additional properties, in the plaint which are claimed to be ancestral properties. So also the application seeks to add defendant nos.3, 4 and 5 as parties to the suit on the count of they are being the sons and daughters of Yashwant Tadas, the original ancestor.

4. Though the learned trial Court has observed that the application has been filed at the stage of cross examination of the defendant, however, since the suit for partition and separate possession, is already pending and needs to be finally decided, the bringing of additional properties and necessary parties, in to the suit may be at a belated stage, cannot be faulted, which is also for the reasons that in case the amendment is rejected, that would result in filing of separate suit. Avoidance of multiplicity of proceeding is also one of the reasons which weighed with the Court for granting

amendment though at a belated stage. The same has also been held in LIC Vs Sanjiv Builders, decided by the Hon'ble Apex Court on 01-09-22 while summarizing the position regarding the amendment in para 70. Therefore, that being the position, I do not see any reason to interfere in the impugned order.

5. The petition is dismissed in the above terms.
No costs.

JUDGE

Deshmukh