



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

WRIT PETITION NO. 3558 OF 2023

1. Dr. Shyamsundar S/o. Ratanlal Sharma,
Aged 52 yrs., Occ. : Service,
2. Smt. Indira Wd/o. Ratanlal Sharma,
Aged 72 yrs., Occ. Household,

Both Petitioners No. 1 & 2
R/o. 145, Ajni Chowk Layout,
Wardha Road, Nagpur.

.... **PETITIONERS.**

// VERSUS //

1. Chudaman S/o. Vishvanath Wath,
Aged 50 yrs., Occ. Business,
2. Ishwar S/o. Vishvanath Wath,
Aged 46 yrs., Occ. Cultivator
3. Nandu S/o. Vishvanath Wath,
Aged 42 yrs., Occ. Cultivator
4. Bandu S/o. Vishvanath Wath,
Aged 31 yrs., Occ. Cultivator
5. Ganesh S/o. Vishvanath Wath,
(Since Dead) Through Legal Heirs,

5(i) Ramabai Ganesh Wath,
Aged about 47 years, Occ. : Service

5(ii) Ritik Ganesh Wath,
Aged about 21 years, Occ. : Student,

5(iii) Mayur Ganesh Wath,
Aged about 20 years, Occ. : Student,

R/o. Near Narayan Mahajan School
Punapur Juni Basti, Bhandewari,
Bagadganj, Nagpur.

6. Duryodhan S/o. Vishvanath Wath,
Aged – 27 yrs., Occ. Cultivator

7. Lalita D/o. Vishvanath Wath,
Aged -25 yrs., Occ. Cultivator

All the defendant No.1 to 4, 6, 7 are
R/o. Punapur (Pardi), Tah. & Dist.
Nagpur.

8. Ramsingh Ramanji Hanwate
(Since Dead)

8(i) Nirmala Ramsingh Hanvate,
Aged about 58 years, Occ.: Household

8(ii) Gajanan Ramsingh Hanvate,
Aged about 37 years, Occ.: Business,

8(iii) Dyaneshwar Ramsingh Hanvate
Aged about 36 years, Occ.: Business,

R/o. Plot No.329, Near Durga Mata
Mandir, Bharatnagar, Kalmana,
Nagpur.

9. Rajkumar Bhaulalji Thakre,
Aged about 27 years, R/o. Bharat Wada,
Pardi, Nagpur.

10. Banwarilal Kashiram Sonkusare,
(Since Dead) Through Legal Heirs

10(i) Satibai Banwarilal Sonkusare
Aged about 52 years, Occ.: Household

10(ii) Ratan Banwarilal Sonkusare,
Aged about 32 years, Occ.: Business,

10(iii) Ravi Banwarilal Sonkusare,
Aged about 29 years, Occ.: Business,

R/o. Plot No.1502, Behind Sindhu Bhawan
Hall, Maharshi Dayanand Nagar, Binaki Road,
Nagpur.

11. Anil Prabhakar Nate
(Since Dead) Through Legal Heirs

11 (i) Lalita Anil Nate,
Aged about 38 years, Occ.: Service,

11 (ii) Janvi Anil Nate,
Aged about 15 years, Occ.: Student,

11 (iii) Tanushri Anil Nate,
Aged about 11 years, Occ.: Student,

(ii) & (iii) are through their natural
guardian – Mother, Smt. Lalita Anil
Nate.

R/o. Near DP, 205, Rambhumi Layout
Bhandara Road, Pardi, Bhandewari,
Nagpur.

12. Bhojlal Lathiramji Bhopche
(Since Dead) Through Legal Heirs

12(i) Kesar Bhojlal Bopche,
Aged about 50 years, Occ.: Business,

R/o Plot No.105, Bhavani Mandir
Road, Near Ganesh Mandir,
Bhawani Nagar, Pardi, Nagpur.

12(ii) Nita Bhojlal Bopche,
Aged about 30 years, Occ.: Education,
R/o. Plot No.107, Bhavani Mandir
Road, Near Dhakate Ata Chakki,
Bhawani Nagar, Pardi, Nagpur.

12(iii) Yogita Bhojlal Bopche,
Aged about 28 years, Occ.: Household,
R/o. Plot No.107, Bhavani Mandir
Road, Near Dhakate Ata Chakki,
Bhawani Nagar, Pardi, Nagpur.

12(iv) Ravi Bhojlal Bopche,
Aged about 18 years, Occ.: Student,
R/o. Plot No.105, Bhavani Mandir
Road, Near Ganesh Mandir,
Bhawani Nagar, Pardi, Nagpur.

15. Sohanlal Dhaniram Rahangdale,
Aged about 39 years, R/o. Bhandewadi,
Nagpur.

.... RESPONDENTS.

Shri Anjan De, Advocate for Petitioners.

Shri S.L.Kotwal, Advocate for Respondent Nos. 01 to 07.

Shri Amit A. Choube, Advocate for Respondent Nos. 08 to 13.

CORAM : ANIL S. KILOR, J.

DATED : OCTOBER 13, 2023

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. The order dated 18/04/2023 passed by the Second Joint Civil Judge Senior Division, Nagpur rejecting an application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure seeking to amend the plaint, is under challenge in this writ petition.

4. The petitioners are the plaintiffs, who filed the suit for specific performance of contract dated 08/02/1989 and declaration that the sale deed dated 06/09/2008 executed by the defendant Nos. 1 to 9 in favour of defendant Nos. 10 to 15 is void and illegal. The petitioners have also sought permanent injunction.

5. The petitioners in the said suit filed an application under Order VI Rule 17 of the Code of Civil Procedure for amendment of the plaint. The petitioners thereby sought to add certain paragraphs alleging fraud committed by the defendants. He also sought to add parties to the suit and prayer clauses.

6. The learned trial Court rejected the said application vide impugned order, which gave cause to the petitioners to file the present petition.

7. I have heard the learned counsel for the respective parties.

8. The learned counsel for the petitioners submits that the suit property was originally owned by Khushalji Wath who had three sons Vishwanath, Kashinath and Rambhau. Rambhau and legal heirs of Vishwanath entered into two separate agreements for sale of suit property out of the field Survey No.50/1 of Mouza : Bharatwada with the father of the plaintiff No.1-Ratanlal Sharma. The other brother Kashinath refused to sign the sale deed and as the property on the relevant date stood in the joint names of all the three brothers a suit for partition was filed, which was decreed on 27/07/1992 holding that the plaintiffs and defendants are having 1/3 share each in field Survey No.50/1 of Mouza : Bharatwada and further held that they are entitled for partition and separate possession. It is submitted that at the time of entering into an agreement all the three brothers had demarcated the land and they were holding separate possession. It is argued that as per the land they were in possession of Vishwanath and Rambhau, the father of the plaintiff stated the area and four boundaries on the agreement. It is submitted that however now after the decree it is necessary to amend the suit and bring on record the land which is received by all the three brothers as their shares. He, therefore, submits that the amendment is necessary.

9. It is submitted that despite the statements made before the trial Court, lower appellate Court and before this Court, in the matter of grant of temporary injunction that the defendants have not alienated the suit property, it is revealed that the shares of Rambhau and Vishwanath have been alienated. It is therefore, submitted that the petitioners have tried to mislead the Courts.

10. It is submitted that to defeat the suit while carving out the shares at the time of passing of the final decree of partition, the shares were so carved which do not match with the area which was in possession of the respective vendors on the date of the agreement or which do not match with the four boundaries mentioned in the suit. Thus, it is alleged that it is a fraud and the plaintiff has every right to amend the suit and plead such fraud and prove the same. He therefore, submits that the learned trial Court has committed error in rejecting the application.

11. On the other hand Shri Kotwal, learned counsel for the respondent Nos.01 to 07 submits that no fraud has been committed by the defendants for the reason that the final decree was passed by the Court and shares received by the defendants were as per the decree drawn. Moreover, the defendants stand with their statement that they

have not alienated the suit property. It is submitted that the suit property is different than the land received in share by the defendants and therefore, no incorrect statement was made by the defendants.

12. It is submitted that it was not the case of the plaintiffs that they have entered into an agreement to purchase the respective shares of Rambhau and Kashinath, but the four boundaries were mentioned in the suit and it is apparent on the face of the record that for the specific performance of the contract dated 08/02/1989 the suit came to be filed on 26/08/2005 i.e. after more than 16 years. He, therefore, submits that by way of amendment, the plaintiffs want to change the complete description of the suit property and also they want to change the nature by adding parties who are nowhere related with the alleged agreement. Accordingly, he submits that the learned trial Court has rightly rejected the application.

13. In light of rival contentions, I have perused the record and the impugned order.

14. In the present matter, admittedly the alleged agreement was executed on 08/02/1989 and the suit for specific performance was filed

on 26/08/2005 i.e. after more than 16 years. In the suit four boundaries were mentioned which are as follows:

<i>“EAST</i>	-	<i>Land of Rambhau Wath</i>
<i>WEST</i>	-	<i>Land of Mangalmurti Society</i>
<i>NORTH</i>	-	<i>Bharatwada Pandhan-cum-Public Road</i>
<i>SOUTH</i>	-	<i>Land of Wasudeo Wath.”</i>

15. By way of amendment the plaintiffs want to change the boundaries as under :

<i>“East</i>	-	<i>Land of Bhaskar Kashinath Wath</i>
<i>West</i>	-	<i>Land of Chudaman Vishwanath Wath</i>
<i>North</i>	-	<i>Bharatwada Pandhan-cum-Public Road</i>
<i>South</i>	-	<i>Land of Domaji Wath.”</i>

16. Admittedly, there is no Agreement to sell any land having the above referred four boundaries and the description.

17. Furthermore, by way of amendment the petitioners want to add following parties as defendant Nos.14 to 27D:

<i>“14. Gopabai Wd/o. Rambhau Wath,</i>	
<i>Aged Major, Occ. Household,</i>	
15. Poonaram S/o. Rambhau Wath,	
<i>Aged Major, Occ. Cultivator</i>	
16. Prabhu S/o. Rambhau Wath,	
<i>Aged -Major, Occ. Cultivator</i>	
17. Narayan S/o. Rambhau Wath,	
<i>(Since Dead) Through Legal Heirs,</i>	
17(A) Dinesh S/o. Narayan Wath,	
<i>Aged about 27 years, Occ. : Business</i>	
17(B) Rita Shankar Bhute,	
<i>Aged about 33 years, Occ. : Household,</i>	

- 17(C)Megha Narayan Wath,
Aged about 29 years, Occ. : Household,
- 17(D)Pramila Narayan Wath,
Aged about 55 years, Occ. : Household,
R/o. Plot No.4, Bharatwada Road,
Near Gharpende Kirana Stores,
Jamnagar, Bharatwada, Nagpur.
18. Dayaram S/o. Rambhau Wath,
Aged -Major, Occ. Cultivator
19. Govinda S/o. Rambhau Wath,
Aged -Major, Occ. Cultivator
20. Suresh S/o. Rambhau Wath,
Aged -Major, Occ. Cultivator
21. Nirmala S/o. Rambhau Wath,
Aged -Major, Occ. Cultivator
22. Asha D/o. Rambhau Wath,
Aged -Major, Occ. Cultivator
All the Respondents No.1 to 9
R/o. Punapur (Pardi), Tah. & Dist.
Nagpur.
23. Ramsingh Ramanji Hanvate
(Since Dead)
- 23(A)Nirmala Ramsingh Hanvate,
Aged about 58 years, Occ.: Household
- 23(B) Gajanan Ramsingh Hanvate,
Aged about 37 years, Occ.: Business,
- 23(C)Dyaneshwar Ramsingh Hanvate
Aged about 36 years, Occ.: Business,
R/o. Plot No.329, Near Durga Mata
Mandir, Bharatnagar, Kalmana,
Nagpur.
24. Rajkumar Bhaulalji Thakre,
Aged about 27 years, R/o. Bharat Wada,
Pardi, Nagpur.
25. Banwarilal Kashiram Devangan
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- 25(A) Satibai Banwarilal Sonkusare
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Aged about 32 years, Occ.: Business,

- 25(C) Ravi Banwarilal Sonkusare,
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- 26(C) Tanushri Anil Nate,
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Aged about 18 years, Occ.: Student,
R/o. Plot No.105, Bhavani Mandir
Road, Near Ganesh Mandir,
Bhawani Nagar, Pardi, Nagpur.”

18. By way of amendment the petitioners further wants to add following prayers :

“H) Add in Prayer Clause, Prayer Clause 1A: after the passing of decree of specific performance and the defendants executing the sale deed in favour of the plaintiff on receipt of balance consideration by the Defendants from the plaintiff, the sale deed be executed by the defendants within a stipulated period.

I) Prayer clause 1B) in case the defendant failed to execute the sale deed in favour of the plaintiff within the stipulated period, the Hon’ble Court be pleased to appoint the Court Commissioner/ Court Officer for execution of the sale deed of the suit property in favour of the plaintiff and receive the balance consideration and get the sale deed registered within the stipulated period and grant any other relief deemed fit.”

19. It is evident from the four boundaries mentioned in the plaint that it was never the case of the plaintiffs that they purchased the share of the vendor in the joint property. However, it is the specific case of the plaintiffs that the land demarcated by four boundaries and as stated in the plaint was agreed to be purchased by the father of the plaintiff No.1.

20. From the record, it is further evident that after the decree of partition the respective shares which were received by the legal heirs of

Rambhau and Kashinath are different from the suit land. The shares received by the legal heirs of Rambhau and Kashinath were received in a judicial proceeding. Hence, it is difficult to say that a fraud was committed.

21. In the above referred backdrop, I have no hesitation to hold that the amendment would not only change the description of the suit property relating to which there is no agreement and therefore, it would also change the nature of the dispute. Therefore, such amendment cannot be allowed and it is rightly rejected.

22. Accordingly I do not find any merit in the present writ petition, hence, it is **dismissed**. No order as to costs.

Rule stands discharged accordingly.

24. At this stage, Shri Anjan De, learned counsel for the petitioners submits that as the matter is made time bound by this Court in the earlier round of litigation and the trial Court is directed to decide the suit within six months, there is possibility that the trial Court may not grant him time to approach the Hon'ble Supreme Court. He, therefore, prays that the period of six months may be extended by one more month.

25. In light of the request, the trial Court is directed not to proceed with the mater for one month from the date of this order to enable the petitioners to approach the Supreme Court of India.

26. If the petitioners fail to produce any interim order from the Hon'ble Supreme Court of India within one month, the trial Court may proceed to decide the suit within the time stipulated by this Court.

(ANIL S. KILOR, J)

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