



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

Writ Petition (WP) No. 5031 of 2023

Tarabai S/o Mahadeorao Dhadbe

Versus

Maroti S/o Ambadas Dhadhe 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 Raghav Bhandakkar, Advocate for the petitioner.

CORAM : ANIL S. KILOR, J.

DATED : 30th AUGUST, 2023.

The petitioners filed a suit for perpetual injunction restraining the defendant no.1 from making any construction over the suit property. The said suit was dismissed vide order dated 24th July, 2013 and thereupon the regular civil appeal No. 40 of 2017 was filed. The learned District Judge-1, Hinganghat, Dist. Wardha vide judgment and decree dated 12th July, 2022 framed two additional issues and remanded the matter back to the trial Court for recording the evidence afresh in respect of additional issues.

2. After the remand, the plaintiff filed an application under VI Rule 17 of Code of Civil Procedure for amendment to the suit. The said

application came to be rejected vide impugned order dated 2nd February, 2023 passed by the 2nd Joint Civil Judge, Senior Division, Hinghanghat in Regular Civil Suit No.9 of 2008. The same is the subject matter of the present writ petition.

3. After going through the order of remand, it is evident that the matter was remanded to the trial Court for limited purpose to record the findings on additional issues nos. 3A and 3B and thereafter conclude the trial by recording the findings. The learned lower Appellate Court has not granted liberty to the parties to apply for amendment. In that view of the matter, moving such application is beyond the scope of remand. Moreover, the amendment is not relating to additional issues.

4. In addition to this, on merit the learned trial Court has recorded the reasons including the delay in moving such application and change in nature of the dispute, if the application is allowed.

5. In the circumstances, I do not find that any error committed by the learned trial Court in rejecting the application. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]