

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

WRIT PETITION NO.6185 OF 2022

(SMT. SARASWATI RAMRAO GHUGAL...VS.. THE GRAM PANCHAYAT BHANEGAON & ANR.)

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

Court's or Judge's orders

Shri Abhishek Raju Dhoble, Advocate for Petitioner.
None for the Respondent

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 03, 2023.

1. Heard learned counsel for the petitioner.
None for the respondent, though served.

2. Rejection of application for amendment vide order dated 06/08/2022 passed below Exh. 24 by the Civil Judge Junior Division, Saoner in Regular Civil Suit No. 14 of 2021, is under challenge in the present petition.

3. The petitioner has filed a suit for declaration and permanent injunction, claiming to have inherited the suit property from her father who was the owner and possessor of the suit land and therefore, with these pleadings as regards the ownership, notice issued by the Gram Panchayat i.e. defendant No.1 on 02/02/2021 for removal of alleged encroachment was made the subject matter of the suit. Admittedly, the said challenge to the notice was raised only on the basis of the ownership about the suit property.

4. The learned counsel for the petitioner submits that since beginning it is the case of the plaintiff that she is the owner of the land in question and by proposed amendment the plaintiff does not want to bring some new case. But, seeking to add prayer for declaration as regards ownership. He, therefore, submits that rejection of the application is erroneous.

5. I have perused the petition, documents and the impugned order.

6. From the pleadings made in the plaint, it is clear that the case of the plaintiff is based on pleadings claiming ownership of the suit land. It is also clear from the proposed paragraphs that the petitioner wants to bring on record, by way of amendment, that they are relating to the ownership with a prayer seeking declaration as regards ownership of the suit property.

7. The leaned trial Court while rejecting the application has observed thus :

*“7. The Ld. Counsel for applicant relied on the law laid down by the Hon’ble Supreme Court in **Ragu Thilak D. John Appellant V.S. Rayappan and others Respondents in AIR Hon’ble Supreme Court** in that matter the plaintiff sought amendment under Order VI Rule 17 to bring a fact the record in view of subsequent development there in. However in present matter, there is no such subsequent development. On the contrary, the present amendment will led to point out*

fresh dispute which is not party to the pleadings of both sides. Hence, with due respect to the law led down by Hon'ble Supreme Court I found that the above ruling will not helpful to the plaintiff in present matter. Hence, the application is found devoid of merit. ..."

8. The findings recorded by the learned trial Court that the amendment will lead to point out fresh dispute which is not the part of the pleadings of both sides, is not correct and as such the finding is contrary to the record. Accordingly, I have no hesitation to hold that the learned trial Court committed an error in rejecting the application Exh.24. Accordingly, I pass the folloiwng order:

- i) The Writ Petition is allowed.
- ii) The impugned order dated 06/08/2022, passed below Exh.24 by learned Civil Judge Junior Division, Saoner in Regular Civil Suit No.14 of 2021 is hereby quashed and set aside and thereby application Exh.24 is allowed.

Rule is made absolute accordingly. No order as to costs.