

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

WRIT PETITION NO. 461 OF 2023

Dnyaneshwar Pundlik Lohakare __ Vs. __ Mohan Pundlik Lohakare and ors

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

Court's or Judge's orders

Mr.R.T.Anthony, Advocate for petitioner
Mr. B.W.Patil, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.

DATE : 28/03/2023

1] Heard Mr. Anthony, learned counsel for the petitioner and Mr. Patil, learned counsel for the respondents.

2] The petition challenges the order below Exh.60 dated 14.7.2022, whereby the application for amendment of the plaint has been rejected.

3] Mr. Anthony, learned counsel for the petitioner submits that the proposed amendment seeks to bring on record the subsequent events, post the demise of the plaintiff no.1 on 24.4.2021, on account of her Will dated 24.11.2011 in favour of the plaintiff no.2, having come into effect. The rejection of the amendment is on the ground that the Will dated 24.11.11 does not make a mention of Survey No. 657/1. It is contended that schedule-F to the Will (pg.55) though makes a mention at Sr.No.1 of Survey No. 557/1, the boundaries of the

property are of Survey No. 657/1 and therefore merely because there is an incorrect survey number mentioned, that would not change the identity of the property, which can be established by the boundaries.

4] Since the only reason in the impugned order is regarding the absence of Survey No. 657/1 and it is permissible to establish the identity of the property by the boundaries, in my considered opinion, the ground on which the application has been rejected does not stand to reason, considering which the impugned order is hereby quashed and set aside and application below Exh. 60 is allowed. The petitioner to carry out the amendment within the period of 15 days from today.

5] The petition is allowed in above terms. No costs.

JUDGE

Rvjalit