

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

WRIT PETITION NO.6773 OF 2018

(SHANKAR DAULATRAO THAKARE (DEAD) THR. LRS..VS.. SEWAK NATTHUJI RAUT)

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

Court's or Judge's orders

Shri M.B.Turankar, Advocate for Petitioner.
Shri S.B. Mohta, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : MARCH 21, 2023.

1. Heard.

2. The order dated 24/04/2018 passed below Exh.130 by Joint Civil Judge Junior Division, Kamptee, rejecting the application for amendment filed under Order VI Rule 17 of the Code of Civil Procedure, is under challenge in this writ petition.

3. The petitioner is plaintiff, who filed a suit for declaration and injunction against the respondent in respect of encroachment by affixing iron angles. The suit was dismissed vide judgment and decree dated 18/02/2013. Thereupon, an appeal was filed, which came to be partly allowed, vide order dated 05/01/2017 and the matter was remanded back to the learned trial Court with certain directions. The terms of remand are as follows:

“3] The proceedings is remanded back to the Trial Court with direction that learned trial Court shall appoint Taluka Inspector of Land Records or District Inspector of Land Records

as a Commissioner under Order 26 rule 9 of C.P.C. 1976.

4] The Court Commissioner, so appointed shall take measurement of the land claimed by the parties and adjoining owners in presence of the parties and their local counsel.

5] The Court Commissioner, for ascertaining the exact position of suit field and filed of defendant to show existing dhura between the fields, to show exact position of fixed iron angles by the defendant, if any.

6] The Court Commissioner shall prepare map showing therein boundaries of the disputed suit land and land claimed by the parties alongwith measurement in the map.

7] The Court Commissioner shall prepare report and file it in the record of the case and thereafter learned Trial Court would give an opportunity to the parties to lead evidence, upon considering the evidence as well as the report of the court Commissioner, shall decide the suit afresh in accordance with law as expeditiously as possible on receipt of this order.”

4. Admittedly, the remand was made for a specific purpose and no liberty was granted to any of the parties to apply for amendment or to seek any other prayer beyond the terms of the remand.

5. In the circumstances, though the learned counsel for the petitioner has argued that the proposed amendment is only to correct arithmetical error and it is not prejudicial to the interest of the defendant, considering the terms of the remand and the specific purpose of remand, rejection of the application for

amendment by the trial Court on the said ground does not call for interference.

Accordingly, the Writ Petition is **dismissed**.
No order as to costs.

JUDGE

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