

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

WRIT PETITION NO. 5585 OF 2018

- 1) Smt. Rekha Wd/o. Madhukar Dakhore,
Aged about 50 years, Occ. Household
- 2) Shri Manish S/o. Madhukar Dakhore,
Aged about 30 years, Occ. Service,
- 3) Shri Mayur S/o. Madhukar Dakhore,
Aged about 26 years, Occ. Doctor,

All R/o. Plot No.9, Ayodhya Nagar,
Ram Mandir Road, Nagpur,
Tah & Dist. Nagpur.

.... **PETITIONERS.**

// **VERSUS** //

Smt. Panchafula W/o. Vitthalrao Lakhe,
Aged about 56 years, Occ. : Household,
R/o. Deoli, Tah. Deoli, Dist. Wardha.

.... **RESPONDENT.**

Ms Aruna R. Khare, Advocate for Petitioners.
Ms Anjali A. Joshi, Advocate for Respondent.

CORAM : **ANIL S. KILOR, J.**
DATED : **MARCH 08, 2023**

ORAL JUDGMENT :

1. Heard.

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

3. The applications Exh.18 and Exh.19, moved by the petitioners, for addition of party and amendment of pleadings, respectively, came to be rejected by the impugned order dated 22/03/2018, passed by 8th Joint Civil Judge Junior Division, Wardha. The said common order is under challenge in this writ petition.

4. The learned counsel for the petitioners points out that even though before the commencement of the trial the application for amendment was moved and the same was rejected contrary to the law.

5. It is submitted that after the defence was raised by the defendant that the suit property is an ancestral property and after Chindhuji his wife Sitabai became the owner and from her the defendant purchased the suit property, it is necessary to amend the suit and even in alternative, a relief for partition and separate possession sought with addition of the necessary parties to the suit. She, therefore, submits that the impugned order is erroneous and is liable to be quashed and set aside.

6. The learned counsel for the defendant strongly opposed the present writ petition and submits that the learned trial Court has rightly rejected the applications Exh.18 and Exh.19, preferred by the petitioners.

7. In the light of rival submissions, I have perused the record and the impugned order.

8. Admittedly, the application for amendment was not rejected on the ground that the trial was commenced. The stage, at which the application was moved, was after framing of the issue, but before recording of evidence.

9. The findings which were recorded by the learned trial Court, while rejecting the application, are as follows:

“6. Both the applications are related with each other, hence, I discussed both of them together. Plaintiffs are applied for the declaration and mandatory and permanent injunction simultaneously they prayed for the partition and possession. According to plaintiffs, because of defendant has contested the suit contending that the suit property was ancestral property of Chinduji @ Bapuraoji S/o. Mahadeorao Dakhore and after his death, it become the property of his wife Sitabai and Sitabai sold the same to the defendant and therefore, the defendant is owner of suit property. Therefore, plaintiffs in their prayer alternatively prayed

for the partition and separate possession of their share in suit property. Considering the same as joint property inherited from the ancestral of Chindhuji Dakhore.

7. In my view, the reason stated by the plaintiffs in their application is not satisfactory. The suit is fixed for evidence of plaintiffs. They are applied for the adding of party as well as amendment in pleadings because defendant contended that he is the owner of suit property but it is not decided by the Court till today and it depend on the round of evidence. Hence, I do not find any reason for allowing both applications. ...”

10. After going through the reasons recorded by the trial Court, it appears that the Court has considered the proposed amendment on merit.

11. The Hon’ble Supreme Court of India in the case of *Revajeetu Builders & Developers vs. Narayanaswamy & Sons*, reported in (2009) 10 SCC 84 has laid down the factors to be considered while allowing the application for amendment. The Hon’ble Supreme Court has held thus :

“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) Whether the application for amendment is bona fide or mala fide;

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

64. The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

12. In the case in hand, nowhere it is observed by the learned trial Court that, the amendment is *mala fide*, worthless or dishonest. Whereas, the only ground for rejection of amendment is that the reason stated in application is not satisfactory.

13. Thus, considering the above referred observations of the Hon'ble Supreme Court of India, and the reasons recorded herein above, I am of the opinion that the learned trial Court has committed an error in rejecting the application Exh.19 for amendment and the application Exh.18 for addition of party. Accordingly, I pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned order dated 22/03/2018, passed by 8th Joint Civil Judge Junior Division, Wardha in Regular Civil Suit No.12 of 2016, is hereby quashed and set aside and thereby the applications Exh.18 and 19 are allowed.

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

(ANIL S. KILOR, J)

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