

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

WRIT PETITION NO.7224/2019

Sau. Meera w/o Sandesh Motariya and another

...Versus...

Mr. Ramkishor s/o Laxminarayan Bhagat and others

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

Court's or Judge's orders

Shri A.A. Bhide, Advocate for petitioners
Shri R.D. Murkute, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.

DATE : 24/02/2023

1. Heard Shri Bhide, learned counsel for the petitioners and Shri Murkute, learned counsel for the respondents.

2. The petition challenges the order dated 27/08/2019, whereby the application for amendment of the plaint has been rejected on the ground of due diligence as the application was filed subsequent to the plaintiff having examined himself.

3. It is contended by the learned counsel for the petitioners that what is sought to be brought on record is the judgment and decree passed in Special Civil Suit No.1063/1994 between the Smt. Narmadabai wd/o

Laxminarayn Bhagat - mother of the plaintiffs and the defendant no.1, in which, the Court has held that the mother of the plaintiffs was entitled to 1/6th share in the suit property.

4. This is obviously a legal position, which will have to be taken into consideration by the Court while deciding the suit. Though there is absence of due diligence, however, the proposed amendment, brings on record, a legal position between the parties and the suit necessarily has to be decided in light thereof and therefore, considering the principles as laid down in *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another*, 2022 SCC OnLine SC 1128, the impugned order is hereby quashed and set aside and the application at Exh.28 is hereby allowed.

5. The writ petition is accordingly allowed in the aforesaid terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar