

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

WRIT PETITION NO. 6147/2018

BABARAO S/O MADHUKARRAO DESHMUKH (CHAVHAN)
VS

TRYAMBAKRAO AJABRAO DESHMUKH (DEAD) THR. LRS., KRUSHNARAO @
DILIP TRYAMBAKRAO DESHMUKH AND ORS

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

Court's or Judge's Order

Shri Mahesh Rai, advocate for the petitioner.

Shri N.R. Saboo, advocate for the respondent Nos. 1(a), 1(b), 1(c)(i)
to 1(c)(iii) and 2.

CORAM : ANIL S. KILOR, J.

DATED : 30/01/2023

1. Heard.

2. The order below Exhibit No.174 dated 23/08/2018 passed by the Civil Judge Junior Division, Shegaon, District Buldana in Regular Civil Suit No. 78/1994, rejecting the application for amendment is under challenged, in this writ petition.

3. Shri M.V. Rai, learned counsel for the petitioner submits, that during the pendency of the suit, the measurement of the suit land was carried out and on the basis of the same the defendant was allowed to carry out the amendment. However, in view of this amendment carried out by the defendant in the written statement, the rejoinder was filed. The same was not taken on the record and it

was rejected. Therefore, the application under Order-VI Rule 17 of the Code of Civil Procedure, 1908 was filed for amendment of the written statement, which also came to be rejected. He, therefore, submits that the order is erroneous and liable to be quashed and set aside, as the sufficient opportunity is not being granted to the petitioner to amend the plaint in the light of the amendment carried out by the defendant.

4. The said argument cannot be accepted in the light of the fact that, in proposed paras of amendment, which the plaintiff wants to add to the plaint, there is no mention of any such fact. On the contrary, the facts which are stated in the proposed paras, there is no mention about the fact that only after the measurement, the plaintiff got knowledge about the said facts mentioned in those paras.

5. The learned trial Court after observing that the plaintiff has concealed the fact about the total area of land in dispute as well as filing of proceedings on the same is within his knowledge and no explanation has been offered by the plaintiff that those facts were not pleaded or stated in the plaint.

6. Thus, it can be seen that the plaintiff does not want to bring on record subsequent events or any fact which came in his knowledge after the measurement or amendment carried out by the defendant in the written statement.

7. In absence of any error or perversity committed by the learned trial Court, I do not find any merit in the matter. Accordingly, the writ petition is **dismissed**.

JUDGE