

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

WRIT PETITION NO.1377 OF 2018

[Smt. Jariya @ Ratnmala wd/o Dnaneshwar Ramteke and others .vs. Shri Muneshwar s/o Ramdas Ramteke
(since deceased) and others]

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

Court's or Judge's orders

Shri N.R. Bhishikar, Advocate for Petitioners,
Shri M.P. Khajanchi, Advocate for Respondents.

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CORAM : ANIL S. KILOR, J.

DATE : 5th JUNE, 2023.

The order below Exh.51 dated 18.11.2017 passed by 2nd Joint Civil Judge, Senior Division, Chandrapur allowing the application for amendment of suit under Order 6, Rule 17 of the Code of Civil Procedure, is under challenge in this writ petition.

2. The respondent is the plaintiff who filed a suit for declaration and perpetual injunction and before commencement of the trial, an application Exh.51 for amendment of suit was filed under Order 6, Rule 17 of the Code of Civil Procedure.

3. The application was moved in the backdrop of the *prima facie* observations made by the learned Trial Court in respect of possession of the plaintiff, while deciding application Exh.5. The plaintiff has also sought to amend the prayer clause by substituting the prayer clause-3.

4. The said application came to be allowed, the same is under challenge in the present writ petition on the ground as argued by the learned counsel for the petitioner that it will change the nature of the suit, as earlier the suit was for declaration and perpetual injunction, whereas, now after the amendment it would be for possession. He further submits that the prayer clause-2 in the suit and the amended prayer clause are contrary to each other and therefore, according to the learned counsel for the petitioner, the impugned order is erroneous and liable to be quashed and set aside.

5. Whereas, the learned counsel for the respondents has pointed out that the learned Trial Court has not accepted the case of the plaintiff that he is in possession of the suit property and therefore, the necessary amendment is made. He further submits that even if last part of the prayer clause-2 goes contrary to the amended prayer clause, the Trial Court may deny the same on the said ground. However, as some part of the prayer clause-2 is contrary to the amended prayer, the impugned order would not vitiate.

6. In light of the rival contentions, I have perused the record and the impugned order.

7. Admittedly in the present matter the application for amendment is moved before commencement of the trial. It is settled law that if the application is moved before commencement of the trial, the court shall consider the same by adopting liberal approach.

8. In the present matter, after the rejection of Exh.5 by recording the observations that the plaintiff is not in possession of the suit property, the plaintiff moved an application for amendment for giving up his case about his possession over the suit property and claiming possession.

9. The learned Trial Court, in para 8 of the impugned order, has observed that the amendment would not cause serious prejudice or irreparable loss to either side. The court has further observed that the objection of withdrawal of admission can be verified at the appropriate stage. Thus, after considering that there is a valid ground for allowing the application for amendment, the application was allowed.

10. In light of the impugned order and after considering the amendment which was permitted by the Trial Court and the nature of the suit including the prayers made in the suit, I am of the opinion that no error has been committed by the learned Trial Court in allowing the application more particularly, when the court has observed that in respect of allegation of withdrawal of certain admission, the same will be considered at appropriate stage.

11. Accordingly, the writ petition is dismissed.

(ANIL S. KILOR, J.)