



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

Writ Petition (WP) No. 1083 of 2024

Jaikishor S/o Brijkishor Jaiswal

Versus

Ashok S/o Brijkishor Jaiswal and others

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

Court's or Judge's Order

Shri N. L. Jaiswal, Advocate for the petitioner.

Shri Masood Shareef, Advocate for the respondent no.1.

Shri H.D.Dhumale, AGP for the respondent nos. 8 to
14.

CORAM : ANIL S. KILOR, J.

DATED : 27th FEBRUARY, 2024.

Heard.

2. This writ petition takes exception to the order dated 17th October, 2023 Below Exhibit 113 passed by the learned Civil Judge, Senior Division, Nagpur in Special Civil Suit No. 1034 of 2016 allowing the application for amendment.

3. The learned counsel for the petitioner has raised a challenge to the impugned order on the ground that a detailed objection was raised to the application for amendment. It is submitted that though the point of

limitation was raised pointing out that the suit is of the year 2016 and in the year 2017 the amendment was allowed to the plaint and despite the same the fact which now plaintiff proposed to bring on record by way of amendment and though the facts are of the period prior to filing of the suit, it were not brought on record.

4. It is further pointed out that, by way of amendment, the plaintiff is now trying to add prayer clause to the suit for partition and separate possession and thereby trying to raise a challenge to the Will-deed dated 12th June, 1990 of Brijkishan and gift deed dated 6th November, 2007 and another Will dated 16th May, 2008 i.e. after 32 years.

5. It is further submitted that there is not a single reason recorded by the learned trial Court in discarding the objection raised by the petitioner. It is therefore prayed that the order suffers from the principles of natural justice.

6. On the other hand, Shri Sharif, learned counsel for the respondents opposed the present writ petition and submits that the learned trial Court has rightly recorded the reason that, the amendment is necessary. Accordingly, he prays for dismissal of the present writ petition.

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

8. The petitioner in his reply to the application for amendment has raised objection to the amendment on the ground of limitation as follows:

“2. By way of amendment the plaintiff wants to challenge the Will dated 12.6.1990 of Brijkishan and gift deed dated 6.11.2007 and another Will dated 16.5.2008 executed by Shantabai in favour of the defendant no.6. The plaintiff had full knowledge of these documents. When the amendment was sought in the year 2017 in fact before filing of suit the plaintiff was aware about this document. The plaintiff has knowledge about the Will of father and Will of mother as well as Gift Deed from the dates when those documents were executed and registered. Thus, allowing the plaintiff to claim such reliefs after a period of about 32 years regarding the Will dated 12.6.1990 and about 15 years from the date of Gift Deed etc. is not permissible in law. The provisions of Limitation Act clearly applicable and such reliefs are barred by Law of Limitation.”

9. The learned trial Court while passing the order has recorded the reasons as follows :

“As to Point No.1.

5. On perusal of the record it appears that, the suit is filed for partition, separate possession, permanent injunction etc. Considering the nature of the suit and reasons mentioned in the application, I am of the view that, for determining the real question in the controversy, the proposed amendment is necessary to take on record. If it is allowed no harm or prejudice would be caused to the defendants and it does not change the nature of the suit. Moreover, the issue of limitation, being a mixed question of fact and law, it will be decided after adducing evidence by both

parties. Therefore, I answer Point No.1 in the affirmative.

As to Point No.2:

6. In view of the above discussion, the application is liable to be allowed. Hence, in answer to Point No.2, I pass the following order.....”

10. From the above referred reasons recorded by the learned trial Court, it is evident that the learned trial Court has not dealt with the objection raised by the petitioner as regards the limitation and other objections raised in the reply. The learned trial Court has failed to justify the reasons for discarding the objections raised by the petitioner.

11. In that view of the matter, I find substance in the submission made by the learned counsel for the petitioner that, the impugned order suffers from principles of natural justice. Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The impugned order dated 17th October, 2023 Below Exhibit 113 passed by the learned Civil Judge, Senior Division, Nagpur in Special Civil Suit No. 1034 of 2016 is hereby quashed and set aside;
- iii. The matter is remanded back to the learned trial Court to decide the application afresh after taking into consideration the objection raised by the petitioner as permissible under the law.

iv. The learned trial Court shall decide the said application after hearing both the parties within one month from the next fixed date.

[ANIL S. KILOR, J.]