



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

Writ Petition No. 2823 of 2023

- (1) Smt. Pushpabai Wd/o. Baban
Santoshwar, Aged about – 56 yrs.,
Occ. – Agriculturist,
- (2) Shri. Suhas S/o. Baban
Santoshwar, Aged about – 26 yrs.,
Occ. – Agriculturist,
- Both R/o. Talodhi (Mokasa), Tah.
Chamorshi, Dist. Gadchiroli.

.... Petitioners

VERSUS

- (1) Smt. Pratibha Wd/o. Narendra
Santoshwar, Aged about – 50 yrs.,
Occ. – Anganwadi Sevika,
- (2) Shri. Kishor S/o. Narendra
Santoshwar, Aged about – 31 yrs.,
Occ. – Agriculturist,
- (3) Shri. Ankush S/o. Narendra
Santoshwar, Aged about – 27 yrs.,
Occ. – Student,
- (4) Ku. Priyanka D/o. Narendra
Santoshwar, Aged about – 29 yrs.,
Occ. – Household,

Respondents No. 1 to 4 all
R/o. Talodhi (Mokasa), Tah.
Chamorshi, Dist. Gadchiroli.
(Ori. Defendant No. 1 Narendra
Rambhau Santoshwar expired
during pendency of the appeal and
hence his legal representatives
substituted on record.)

(5) Smt. Kantabai W/o. Ramesh
Shatalwar, Aged about – 40 yrs.,
Occ. – Housewife,
R/o. Gram Panchayat Road, Mul,
Tah. Mul, Dist. Chandrapur.

.... Respondents

Mr. Rohan Bhishikar, Advocate for the petitioners
Mr. Akash P. Joshi, Advocate for the respondents

CORAM : ANIL L. PANSARE J.

DATED : 05-08-2024

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel appearing for the parties.

2. The challenge is to order dated 28-11-2022 passed by the Joint Civil Judge Junior Division, Chamorshi rejecting the application seeking amendment in the plaint.

3. The petitioners – original plaintiffs had filed the suit for permanent injunction against the respondents – original defendants. The suit proceeded on the count that there occurred oral partition of the properties under question which are agricultural lands. The plaintiffs' plea was that they were given a particular share in the oral partition and that respondents – defendants were trying to dispossess them. With this background, plaintiffs filed suit simpliciter for permanent injunction. Along with the suit, was filed an application seeking temporary

injunction which was allowed by the trial Court. The respondents assailed the order before the District Judge, Gadchiroli, who had overturned the findings rendered by the trial Court.

4. The petitioners then filed application to seek amendment in the plaint on the ground that subsequent to the order passed by the District Judge, the respondents have forcibly taken possession of the portion of land allegedly allotted to the petitioner in oral partition. In the light of subsequent development, the petitioner sought to amend the prayer, with necessary pleadings in the suit, seeking partition and separate possession of the suit properties.

5. Learned trial Court rejected the application by assigning following reasons.

“10. But now, on perusal of application for amendment it appears that the plaintiffs want to add another relief in this case as partition and separate possession. Earlier the burden to prove the execution of partition of suit survey no. 553, 205 and 208 was on the plaintiffs. As well as the burden to prove that they are in peaceful possession of suit property and defendants are obstructing their possession was also on the plaintiffs. But the present amendment application shows that plaintiffs are contradicting their earlier pleading regarding oral partition. Thus, if the proposed amendment is allow then the admissions of plaintiffs that oral partition was executed will be reverse. It is the rule of pleading that once any fact is admitted then it cannot be denied. Thus by introducing this proposed amendment the plaintiffs is claiming another relief of partition which is

according to his pleadings has already executed during the life time of deceased Baban and Rambhau. Thus, I find that the proposed amendment is not necessary for determining the real question between the parties. On contrary, it will change the nature of suit, from the suit for permanent injunction to partition and separate possession. Thus, I answer point no. 1 in negative and point no. 2 in affirmative and record my findings accordingly.”

6. As could be seen, the trial Court has held that by proposed amendment, the petitioners are contradicting their earlier pleadings regarding oral partition. This finding, to my mind, is erroneous in as much as the petitioners have maintained their stand that there occurred oral partition of the properties under question. The only change was in view of subsequent development. The petitioners now intend to bring on record that the respondents have taken forcible possession of the portion of the property allotted to them. This cannot be said to be a contradictory statement when the petitioners are maintaining their original stand that there occurred oral partition with an addition that the portion that was given to them has been now taken over by the respondents. In fact, it will be in the interest of the parties to have final adjudication on all the issues involved in the suit. Whether there is merit in the plaintiffs’ plea of oral partition is a different matter but then petitioners cannot be prevented from carrying out amendment in view of the subsequent development so pleaded by them.

7. Learned counsel for the respondents submits that the petitioners have not made the legal representatives of deceased, who owned properties, as party defendant to the suit and thus the amendment ought not to be allowed.

8. This cannot be ground to reject the amendment. It will be open to the respondents to file consequential written statement with objection of necessity of party to the suit.

9. Learned trial Court has erroneously held that the proposed amendment is not necessary for determining the real question, when in fact, the proposed amendment appears to be something that goes to the root of the matter and is necessary to settle all the disputes between the parties finally.

10. The order impugned is, therefore, not sustainable. Resultantly, the order dated 28-11-2022 passed by the Joint Civil Judge Junior Division, Chamorshi below Exhibit 48 in R.C.S. No. 15/2020 is quashed and set aside.

11. The application, Exhibit 48 filed in R.C.S. No. 15/2020 is allowed. Necessary amendment be carried out within two weeks from

the date of receipt of order by the trial Court. The respondents will be at liberty to file consequential written statement.

12. The parties shall appear before the trial Court on scheduled date and take necessary steps in this regard.

13. Rule is made absolute in aforesaid terms.

(Anil L. Pansare, J.)

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