



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

Writ Petition No. 1274 of 2023

want S/o Wamanrao Shende and ors. ..vs.. Krushna Alias Kisna S/o Marotrao Bijwe (dead)
through L.Rs. Sushma w/o Prabhakar Shirbhate and ors.]

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

Court's or Judge's orders

Mr. P. A. Dharaskar, Advocate for the petitioners
Mr. A. S. Dhore, Advocate for respondent no. 1(i) to 1(vii)

CORAM : ANIL L. PANSARE J.

DATED : 12-12-2024

The petitioners – plaintiffs are aggrieved by order dated 15-7-2019 passed below Exhibit 49 by the trial Court rejecting the application seeking amendment to the plaint.

2. Having heard both sides and having gone through the material placed before me, it appears that the petitioners had filed suit for possession of suit property. The suit was filed only against respondent no. 1 – original defendant. Pending suit, respondent no. 2 appeared with a request to add him as party defendant no. 2 on the ground that the suit property was allotted to him in partition, that was executed in the year 1969. Accordingly, he was added as party defendant no. 2. He is nephew of the respondent no. 1. The respondent no. 2 was added as defendant no. 2 pending trial.

3. The trial Court has rejected the application mainly on two grounds, one is, that the petitioners were aware of the partition deed. This inference is drawn on the basis of a statement in the sale deed executed between the petitioners and respondent no. 1 that the respondent

no. 1 acquired the suit property in partition executed in the year 1969. The second reason is that the amendment under the Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'Code') post trial is impermissible.

4. In my view, the trial Court committed serious error of law and also in appreciation of facts. The inference that the petitioners were aware of partition is misconceived in as much as there is nothing in the sale deed to show that in partition, the suit property was allotted to respondent no. 2; rather the respondent no. 1 claimed rights of ownership over the suit property on the basis of said partition. Accordingly, the recital was made in the sale deed that respondent no. 1 acquired the title over the property in terms of the partition deed. Such recital can, by no stretch of imagination, be treated as knowledge of the contents of partition deed. Thus, the finding that the petitioners were aware of the partition is erroneous. So far as permitting amendment post trial, the law is well settled that if the proposed amendment goes to the root of the case and if the same is based on consequential events, the amendment ought to be allowed. In the present case, respondent no. 2 himself appeared when matter was fixed for evidence and thereafter made a claim over the suit property. The petitioners, therefore, rightly filed application seeking amendment to counter the plea taken by the respondent. The finding of the trial Court is, therefore, against the settled principles of law.

5. Put altogether, the trial Court committed serious error in appreciating the contents of sale deed, so

also applying the provisions of Order VI Rule 17 of the Code. The order impugned is, therefore, unsustainable.

6. As such, the petitioners have also challenged order dated 11-9-2019 passed below Exhibit 52, however, learned counsel for the petitioners is not pressing for order.

7. In view of the above, the petition is partly allowed.

8. Order dated 15-7-2019 passed below Exhibit 49 in Regular Civil Suit No. 13/2014 by Joint Civil Judge Junior Division, Arvi is quashed and set aside. The application, Exhibit 49 is allowed. The petitioners shall carry out amendment within four weeks from the scheduled date before the trial Court. The respondent may file consequential amendment in 15 days thereafter.

9. The petition is disposed of in above terms. No order as to costs.

(Anil L. Pansare, J.)