



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

Writ Petition No. 1583 of 2011

[Vasant S/o Baliram Kadave ..vs.. Satyabhama Bhaurao Warghane 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. N. A. Gaikwad, Advocate for the petitioner
Mr. P. V. Thakre, Advocate for respondent nos. 1 to 5, 7 and 8

CORAM : ANIL L. PANSARE J.

DATED : 19-09-2024

The challenge is to order dated 17-2-2011 passed by the Civil Judge Junior Division, Hinganghat rejecting application filed by the petitioner – original defendant no. 9 seeking amendment to written statement.

2. Having heard both sides and having gone through the material placed before me, it appears that the predecessor of respondent nos. 1 to 9 had filed a suit for declaration that sale deed executed by predecessor of respondent nos. 10 to 14 (original defendant no. 1) in favour of petitioner – original defendant no. 9 is illegal and further for partition of suit properties.

3. The original defendant no. 1 took a plea before the trial Court that the suit property devolved upon him through testamentary disposition i.e. Will executed by Suryabhan, the grandfather of defendant no. 1. In his written statement, he averred that he has sold the suit property to petitioner (defendant no. 9) for Rs. 2,00,000/- and that entire consideration amount has been received. The petitioner in his written statement has reiterated the theory put forth by defendant no. 1, meaning thereby that

in written statement, the petitioner has averred that he has purchased the suit property for a total consideration of Rs. 2,00,000/-.

4. The defendant no. 1 expired pending suit. His legal representatives i.e. respondent nos. 10 to 14 have filed written statement denying what has been said by the defendant no. 1.

5. In context with above, the petitioner filed application seeking amendment to explain transaction entered into by him with the defendant no. 1. The trial Court noted that what has been said by defendant no. 1 is on record. The contrary stand taken by his legal representatives is also on record and same can be considered at the time of final hearing. The Court was of the view that so called clarification of transaction is a matter of evidence and accordingly rejected the application.

6. I do not find any error in the aforesaid approach in as much as the case of the petitioner is that he has purchased the suit property from defendant no. 1. Similar stand is taken by defendant no. 1 which is a matter of record, as rightly observed by the trial Court. The clarification towards payment is something that can be proved by leading evidence because the foundation to lead evidence for payment of consideration amount has been already made in the written statement filed by the petitioner, merely, because the legal representatives of defendant no. 1 have taken a different stand, would not require clarification as regards the consideration amount

or the manner in which the amount was paid by the petitioner to the defendant no. 1. That can be proved by leading evidence.

7. In that view of the matter, I do not find any perversity in the order impugned. The writ petition is dismissed.

(Anil L. Pansare, J.)

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