



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

**WRIT PETITION NO. 1515/2011**

Chindhu Atmaram Wagh (Dead thr. LRs.) Nilkanth Chindhuji Wagh and  
Ors. .Vs. Smt. Sonabai Shriram Gomkar and Ors.

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

Court's or Judge's orders

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Mr. S. S. Ghate, Advocate for petitioner.

**CORAM : ANIL L. PANSARE, J.**

**DATE : AUGUST 20, 2024**

Heard Mr. S. S. Ghate, learned counsel for the petitioner. None present for the respondents.

2. Counsel for the petitioners has restricted his prayer to quash and set aside order dated 21.12.2010 passed by 5<sup>th</sup> Jt. Civil Judge Senior Division, Nagpur, rejecting the request made by the petitioner – original defendant No.1 to amend the written statement and order dated 11.02.2011, closing the evidence of the petitioner. The original petitioner (now represented by his legal representatives), was father of viz. plaintiff and defendants before the Trial Court. He has sold the suit property to his own sons and daughters (Defendant Nos. 2, 3, 10 and 11). One of the sons, plaintiff has, by filing suit, challenged the said sale deed. The stand of the plaintiff is that the suit property is ancestral property and, therefore, his father (original petitioner) could not have sold it, treating it as his exclusive property.

3. In context with above, original petitioner had filed written statement, stating therein that the suit property is his

self acquired property. Accordingly, issues were framed. The evidence of plaintiff was over. The evidence of defendant No.1 – original petitioner was scheduled when he filed application seeking amendment in the written statement.

4. The Trial Court noted that by way of amendment, the original petitioner is trying to withdraw his admission that the suit property is his self acquired property. The original petitioner intended to bring on record that the suit property is his ancestral property. The Court below noted that if this amendment is allowed, it will cause serious prejudice to the defendant Nos. 2, 3 10 and 11 in whose favour the sale deed has been executed by the original petitioner. The Trial Court then referred to the judgment of the Hon'ble Apex Court in the case of Hiralal Vs. Kalyan, AIR 1998 SC 618, wherein the Supreme Court held that while seeking amendment in the written statement, withdrawal of admission made in the written statement by defendant therein would displace the plaintiff's case and cause him irretrievable prejudice, which is not permissible.

5. In the present case, irretrievable loss will be caused to defendant Nos.2, 3, 10 and 11. This amendment, if allowed, will permit original petitioner to take a somersault as regards his own admission that the suit property is self acquired property, which is not permissible, particularly when trial has already commenced and plaintiff's evidence is closed.

6. In that view of the matter, I do not find any error in the order passed by the Trial Court rejecting application filed by the original petitioner.

7. So far as order, by which the Trial Court has closed the evidence of original petitioner is concerned, the order is passed on the ground that he is unnecessarily prolonging the matter. As such the respondents herein have averred in their reply that permission to lead evidence to defendant No.1 (original petitioner) could be granted by imposing costs, however, he has expired pending petition and, therefore, even if the Trial Court's order is set aside, no purpose will be served.

8. The Trial Court, therefore, may permit other defendants, including legal representatives of defendant No.1, if there is no other legal impediment, to lead evidence and proceed further in accordance with law.

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

**(Anil L. Pansare, J.)**