



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

WRIT PETITION NO. 2578 OF 2019

(Sk. Naimul Haq Sk. Aji and others Vs Jubedabi w/o. Gayasuddin)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of direction,
and the Registrar's orders.*

Court's or Judge's order

Mr. B.N. Mohta, Advocate for Petitioners.
Mr. N.R. Saboo, Advocate for Respondent.

CORAM : ABHAY J. MANTRI, J.

DATE : SEPTEMBER 12, 2024.

Heard learned Counsel for the parties.

2. Defendant No.1 and the legal heirs of Defendant No. 2 are dissatisfied with the order dated 17.01.2019 in Regular Civil Suit No. 149/1996, passed by Civil Judge Junior Division, Washim, have preferred this petition, whereby allowed the application for amendment filed by the respondent/original plaintiff.

3. Mr. Mohta, the learned Counsel for the petitioners, vehemently argued that by the proposed amendment, the respondent / original plaintiff wanted to change the nature of the suit property. Also, the plaintiff is trying to change the location and identification of the suit property by changing the boundaries; therefore, passing the impugned order by the

learned trial Court without considering the said facts is unjust and contrary to the facts on record.

4. Per contra, Mr. Saboo, the learned Counsel for the respondent, argued that the trial Court had considered the objections raised by the petitioners and rightly discarded them. Therefore, no interference is required in the writ jurisdiction.

5. I have appreciated the contentions of learned counsel for the parties and perused the impugned order and record.

6. This is a second round of litigation between the parties. In Second Appeal No. 470/2016, this Court passed the order. It would be relevant to re-produce paragraph No. 10 of the said order as under:

"I) The judgment in Regular Civil Suit No. 149 of 1996 dated 22.04.2008 and the judgment in Regular Civil Appeal No. 47 of 2008 dated 13.06.2016 is set aside.

*II) The matter is remanded to the trial Court to consider the objections to the report of the Court Commissioner as raised at Exhibit 101. **The parties are at liberty to amend their pleadings if found necessary. The plaintiff is at liberty to place on record the sale deed dated 03.04.1956. The parties are at liberty to lead additional evidence besides the evidence which is already on record.***

*III) **The trial Court shall reconsider the entire evidence and decide the suit afresh on its own merits without being influenced by any observation made in this judgment.***

IV) The parties shall appear before the trial Court on 27.08.2018. The proceedings before the trial Court are

expedited, and the trial Court shall take steps to decide the suit by the end of February 2019”.

Upon perusing the said order, it is apparent that this Court has granted liberty to the plaintiffs to amend the suit if necessary and granted liberty to lead additional evidence besides the evidence already on record. The trial Court was also directed to reconsider the entire evidence afresh.

7. Pursuant to the said order on 29.11.2018 and the facts that during the pendency of the earlier proceedings, the defendant encroached over the suit property by making construction thereon, and therefore, she wanted to incorporate the said fact on record as subsequent events occurred. Thus, the respondent moved an application permitting her to amend the Plaint. The said application was opposed by the petitioners, contending that it changed the location and identity of the suit property; therefore, the plaintiff is not entitled to carry out the amendment.

8. At the outset, it reveals that the plaintiff wants to bring subsequent events that occurred during the pendency of the earlier proceedings on record by said amendment application. It does not appear that the identity or location of the property is changed, as no plot number or survey number of the property has been changed.

9. That being so, it does not change the nature of the suit property or alter the cause of action. Moreover, the plaintiff has not corrected or changed the plot number. Therefore, in my opinion, in view of the liberty granted by this Court, the plaintiff is entitled to carry out the amendment since it would not cause prejudice to the interest of the defendant; rather, it would help to determine the real question in controversy between the parties. Consequently, I do not find any illegality in the impugned order to cause interference in it.

10. As a result, the petition being sans merits stands dismissed with no order as to costs.

(ABHAY J. MANTRI, J.)