



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

WRIT PETITION NO. 2923 OF 2019

Ranjit s/o Ratnakar Pande,
Aged about 40 years,
Occ. – Business/Agriculturist,
R/o 169, Old Subhedar Layout, Nagpur.

.... **PETITIONER**

VERSUS

- 1) Shri Vikas s/o Shankar Gujarmale,
Aged 32 years, Occ.- Cultivation.
- 2) Mast. Showrya s/o Vikas Gujarmale,
Aged 4 years, Occ. – Education,
through its Natural Guardian mother
Sou. Vandu @ Pinki w/o Vikas Gujarmale.
- 3) Smt. Sonabai w/o Shankar Gujarmale,
Aged 52 years, Occ.- Cultivation.
All R/o Tamaswadi, Tahsil-Parsheoni,
District Nagpur.
- 4) Shri Shankar s/o Yadorao Gujarmale,
Aged 60 years, Occ.- Service,
R/o Tamaswadi, Tahsil – Parsheoni,
District Nagpur.

.... **RESPONDENTS**

Mr. N.S. Deshpande, Advocate for the petitioner,
Mr. G.R. Sadar, Advocate for respondent Nos.1 to 4.

CORAM : ABHAY J. MANTRI, J.
DATED : 12th SEPTEMBER, 2022

ORAL JUDGMENT :

Rule. Rule is made returnable forthwith and heard by consent of the learned Advocates for the parties.

2. The petitioner/original defendant No.1 being aggrieved by the order dated 22-03-2019 passed by the learned Civil Judge, J. D., Parsheoni, District Nagpur, whereby allowed the application for amendment of the plaint.

3. Mr. N. S. Deshpande, learned Advocate for the petitioner, has vehemently argued that after the closure of the evidence of both the parties, the plaintiffs moved an application permitting them to amend the plaint by incorporating the words “*partition* and *separate possession*” in the suit property. He canvassed that the amendment had changed the nature of the suit. The learned trial Judge has not considered the said fact; however, solely on the ground that the proposed amendment would not cause prejudice to the defendant and would reduce the multiplicity of litigation. Hence, he urged that the impugned order is illegal and liable to be quashed.

4. *Per contra*, Mr. Sadar, the learned Advocate for the respondents, has strenuously argued that the averments in paragraph 7

of the plaint clearly disclose about carrying out the partition. Therefore, he has submitted that the impugned order is just and proper and no interference is required at the hands of this Court.

5. I have appreciated the submissions of the learned Advocates for both parties and perused the impugned order and record.

6. At the outset, it appears that the respondent-original plaintiffs initially filed a simpliciter suit for declaration and permanent injunction. No averment about partition and separate possession of the suit property appears in the plaint. It is not in dispute that evidence of both parties was concluded, and the matter was posted for argument. At that time, the plaintiffs moved an application under Order VI Rule 17 of the Civil Procedure Code to amend the pleadings and the prayer clause.

7. A bare perusal of the pleadings in the plaint and the application, it seems that if the plaintiffs are permitted to carry out the amendment, then certainly it would change the nature of the suit and cause of action, which is not permissible. *Moreover*, it is not the case of the plaintiffs that, in spite of the due diligence, they could not have added the prayer clause for '*partition and separate possession*' of the

suit property before the commencement of the trial. On that ground alone, the application for amendment has to be rejected.

8. Perused the impugned order. The trial Court observed that evidence from both sides had been concluded, and the matter was fixed for final argument. Despite the said fact, without recording a finding in respect of proviso to Order VI Rule 17 of the Civil Procedure Code, the trial Court observed that if the amendment is allowed, it would not change the nature of the suit and to reduce the multiplicity of litigation, the same was allowed. The said finding appears to be contrary to the facts on record. Initially, the plaintiffs filed a simpliciter suit for declaration and injunction. By way of amendment, the plaintiffs claim relief of partition and separate possession of the suit property. The said fact itself clearly shows that if the amendment is allowed, then certainly the nature of the suit will be changed, and, therefore, the trial court's findings in that regard are improper and incorrect. Secondly, neither paragraph No.7 nor the plaint reflects that the plaintiffs have made an averment that they are claiming the relief of partition and separate possession of the suit property. Besides, no pleading appears about the cause of action arising to claim the relief of partition of the suit property. Therefore, the findings given by the trial court in that regard also appear contrary to the facts on record. As

such, based on the said findings, the impugned order cannot be sustained in the eyes of the law and is liable to be set aside.

9. In this background, I deem it appropriate to allow the petition. Hence, I pass the following order :

(i) The impugned order dated 22-03-2019 passed below application Exhibit 56 by the learned Civil Judge, Junior Division, Parsheoni, District Nagpur, is hereby quashed and set aside, and the application for amendment is rejected.

(ii) Inform the trial Court accordingly.

10. Rule is made absolute in the aforesaid terms.

(ABHAY J. MANTRI, J.)

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