



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

WRIT PETITION NO. 4041 OF 2024

Yogesh Rajesh @ Raju Madiwale

Vs.

Vijaykumar Baburao Madiwale and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.A. Mohta, Advocate for petitioner.

CORAM : N.R. BORKAR, J.

DATE : 29.08.2024.

This petition takes exception to the order dated 16.01.2024 passed by 8th Joint Civil Judge Senior Division, Akola below Exhibit 123 in Special Civil Suit No.61/2017.

2. The respondent No.1 herein has filed the suit for partition and separate possession against the petitioner and respondent Nos.2 to 4.

3. By the order impugned, the trial Court has rejected the application filed by the present petitioner for amendment of the written statement.

4. The proposed amendment reads thus : -

“36-A. That pending the present proceeding the present plaintiff has stopped the business of jewellery. Now the plaintiff has started running

business of child ready-made garments. The defendant submits that the plaintiff has malafidely filed the present suit to show false need of suit premises. Furtherance the plaintiff has left his residential house situated in the suit property and has shifted to flat apartment near Seven Heaven Bakery. So also the plaintiff has taken one shop in Raut Wadi Locality and has given the same on rent. The defendant submits that the said residential flat and shop are purchased by the plaintiff out of joint family funds. As such the same are also liable for partition. As such the defendant reserves to file counter claim and claim share therein by filing appropriate proceeding before the Hon'ble Court. Moreover the defendant submits that in light of the fact that the plaintiff is no longer in need to expand his business of jewellery and is no more in need of shop premises as alleged by him the cause of action of the plaintiff has itself become infructuous to the extent of claim made in respect of the suit shop premises and the claim of plaintiff does not survive. As such there is no cause of action to file this suit against the present defendant and the plaint is liable to be rejected for want of cause of action."

5. The trial Court has rejected the amendment application on the ground that trial has commenced and the proposed amendment is not

necessary for deciding the real controversy between the parties.

6. In the facts and circumstances of the case, I am not inclined to interfere with the impugned order.

7. The writ petition is dismissed.

(N.R. BORKAR, J.)