



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

WRIT PETITION NO.695/2019

Smt. Kusum Raghupatrao Kene .vs. Smt. Yogita Kesharao Netankar

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

Court's or Judge's orders

Mr. S. Alaspurkar, Advocate for respondent.

CORAM : ANIL L. PANSARE, J.

DATE : 03.07.2024

The challenges is to the order dated 21.03.2018 passed by learned Civil Judge Senior Division, Amravati passed below Exh.-68 in Special Civil Suit No.148/2013. The respondent-plaintiff filed an application under Order VI Rule 17 for amendment in the plaint. The application is allowed by assigning following reasons:

“5. Admittedly, in the present suit the evidence of the plaintiff is over and the defendant has filed her evidence affidavit at Exh.61 on 16.03.2017. Therefore, it is evident that trial has commenced. Rule 17 Order 6 of C.P.C is about when the amendment of pleadings shall be permitted. This Rule says that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. In this suit, the plaintiff has come with the case to declare that she has absolute right, title and interest over the suit property by virtue of will dated 5.8.2010 executed in her favour by the husband of the defendant. In the pleadings, the plaintiff has stated as to how she started residing with the husband of the defendant namely Raghupatrao Vithobaji Kene and her relations with him. From these pleadings,

it appears that late Raghupatrao had every love and affection towards the plaintiff as good as the real father. In short, late Raghupatrao was taking every care of the plaintiff as he was issue-less. In the circumstances, the proposed amendment appears to be necessary for the purpose of determining the real question in controversy between the parties as she wants to prove that she is the adopted daughter of late Raghupatrao.

6. *However, the proviso of Rule 17 of Order 6 of C.P.C says that provided that no application for amendment shall be allowed after trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. In the light of this if the contents of the application with respect to proposed amendment are perused then they appear to be like that the plaintiffs father after retirement from his service from S.R.PF came to Amravati with all his belonging to reside permanently in their constructed house. At that time the original copy of adoption deed dated 30.04.1993 was found and the father of the plaintiff handed over the same to the plaintiff i.e on 28.06.2017. The plaintiff moved this application on 24.07.2017 elaborating all the events categorically. It is pertinent to note that before filing of this application the plaintiff has not made whisper about the adoption deed but when she found it immediately filed this application. If the proposed amendment is allowed and plaintiff is able to prove the adoption deed then her status would be otherwise which would decide real controversy between the parties. Hence, it appears that in spite of due diligence the plaintiff could not have raised the matter before the commencement of trial. Further, it would be multiplicity of litigation which would not be justifiable. Hence, application is allowed. The plaintiff to incorporate amendment within 14 days from the date of this order.”*

As could be seen, the Trial Court has considered the effect of proviso to Rule 17 and taking note of the fact that the amendment sought is because of subsequent development and further that the amendments were necessary for the purpose of determining the real question in controversy, has allowed the application. I do not find any error in the approach of the Trial Court, particularly when the petitioner's counsel is absent.

The petition is accordingly dismissed.

Copy of the order be served on the Trial Court.

(Anil L. Pansare, J.)

Kahale