



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

Writ Petition No. 7536 of 2019

prakash S/o Kesardev Murarka and ors. ..vs.. Navalkishore Gokulchand Murarka and ors.]

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

Court's or Judge's orders

Mr. M. G. Sarda, Advocate for the petitioners
Mr. V. A. Lohia, Advocate h/f Mr. D. R. Khapre, Advocate for respondent
no. 1

CORAM : ANIL L. PANSARE J.

DATED : 09-07-2024

Heard.

2. The challenge is to order dated 24-10-2019 passed below Exhibit No. 225 by learned Civil Judge Junior Division, Shegaon, District Buldana in Regular Civil Suit No. 51/2009.

3. The petitioners – original defendant nos. 22 to 24 filed application to seek consequential amendment in the written statement. In doing so, the petitioners intended to add couple of paragraphs which deals with the issue involved in the suit, namely, sale deed dated 22-1-2009.

4. The respondent – plaintiff has filed the suit seeking injunction against the petitioners and other defendants on the ground that sale deed dated 22-1-2009 is null and void. The petitioners intend to amend the written statement by stating that the alleged sale deed stand automatically cancelled. This pleading is something that is relevant to the issue involved in the suit and, therefore, the trial Court ought to have allowed the

application particularly when the amendment was sought at a pre-trial stage.

5. Learned counsel for the respondent has opposed the petition on the ground that the amendment which the petitioners intend to carry was subject matter of previous civil suit between the same parties. In the said suit also, the petitioners are defendants. This defence was raised in that suit also. Their defence was struck off for breach of injunction. The dispute reached to the Hon'ble Supreme Court but with no fruitful result in favour of the petitioners.

6. In my view, merely because the defence put forth by the petitioners in another suit has been struck off for breach of injunction and merely because he did not get any relief from the Supreme Court by itself will not be a bar to raise similar defence in subsequent suit, if the defence is otherwise relevant.

7. As stated earlier, the moot question in pending suit before the trial Court is about validity of sale deed dated 22-1-2009. The defendants intend to claim something which is relevant to decide whether sale deed indeed is null and void. In that view of the matter and in terms of settled principles of law, the trial Court ought to have been little liberal.

8. In view thereof, the order being erroneous will have to be set aside and accordingly stands set aside.

9. Consequently, the application filed by the petitioners/defendant nos. 22 to 25, below Exhibit No. 225 is allowed.

10. Necessary amendment be carried out within fifteen working days from today. Amended copy of written statement be served upon the respondents.

11. The trial Court shall thereafter proceeded with the case in accordance with law.

(Anil L. Pansare, J.)

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