



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

Writ Petition No.8014/2019
(Sau. Shakuntala V Ganpat and others)

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

Court's or Judge's orders

Mr. S.K. Thengri, Advocate for Petitioner.
Mr. B.V. Reddy, Advocate for resp. nos. 1, 2, 4 and 5.
Mr. A.A. Dhawas, Advocate for resp. nos. 3(1) to 3(d) and 6.
Mr. A.A. Pardhi, Advocate for resp. no.7.

CORAM : Abhay J. Mantri, J.

DATE : 04-04-2024.

Heard learned Advocate for both the parties.

2. By this petition, the petitioner is challenging the orders passed below Exhibit-152 and Exhibit-163, dated 17-08-2019 and 27-09-2019 respectively by the learned Civil Judge Junior Division, Bramhapuri in RCS No.69/2012, whereby the applications to amend the plaint and review of order dated 17/08/2019 have been rejected.

3. During the argument following facts emerge.

It is undisputed that the petitioner is the original plaintiff who filed the suit for partition and separate possession of the suit property on 09-09-2012. In the year 2014 issues have been framed. The plaintiff adduced the evidence on 18-10-2014 and part of cross-examination was also conducted. After five years i.e. on 17-07-2019, the

petitioner moved an application to permit her to amend the plaint by incorporating some facts, which came to be rejected. Against the said order she has filled the review application. Which came to be rejected. Hence this petition.

4. On query, the learned Advocate for the petitioner failed to point out as to why she could not have filed an application for amendment before the commencement of the trial. Moreover, the petitioner failed to show that despite due diligence she could not have raised the said fact in the plaint before the commencement of the trial. Undisputedly, by this petition, the petitioner wants to incorporate the averments that the Sale Deeds dated 02-03-2006 and 17-02-2011 are not binding upon deceased Motiram and defendant nos. 1 and 2. It is pertinent to note that the said fact was within the knowledge of the petitioner before filing of the suit but she failed to incorporate the same in the plaint. So also, the petitioner failed to amend the plaint before the commencement of the trial.

5. It further seems that in view of Order 2 Rule 2 of the Code of Civil Procedure (CPC), the plaintiff omits to sue for all such reliefs, to which she was entitled, therefore, the plaintiff shall not

afterward sue for any relief so omitted. As such, the plaintiff is not entitled to claim the omitted relief by way of amendment. It further emerges that those Sale Deeds were executed in the years 2006 and 2011 and therefore claiming relief about those Sale Deeds i.e. not binding on the plaintiff after a period of eight years, which are hit by the provisions of the law of limitation. The said facts were well within the knowledge of the plaintiff before filing the suit, but she failed to incorporate the same in the plaint.

6. Perused the impugned orders. It seems that the learned Judge after considering the facts on record, in paragraphs 5 and 6, gave the detailed findings and held that if the amendment is allowed then it would certainly change the nature of the suit and the question of limitation would arise, hence, the application was rejected. Learned Judge has also considered the relief claimed by the plaintiff in the suit as well as a review application.

7. Having considered the same, it seems that the petitioner/plaintiff has failed to show that in spite of due diligence she cannot bring the said fact in the plaint before the commencement of the trial. Therefore, I do not find any substance in the petition. As such, I pass the following order.

ORDER

- (a) Petition is dismissed.
- (b) As a sequel ad-interim relief granted by order dated 06/12/2019 stands vacated.
- (c) Inform the learned trial Court accordingly.

(Abhay J. Mantri, J.)