



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

WRIT PETITION NO. 272 OF 2024

Abhishek s/o Ravishankar Agrawal,
aged about 60 years, Occ: Chartered
Accountant,
R/o Rajakarma Bhawan, Gokulpeth,
Nagpur-440010.

PETITIONER

Versus

1. M/s Rai Saheb Gopi Kishan Agrawal
Charitable Trust Village & P.O.
Tumsar- 441912. District Bhandara.

~~2. Smt. Mohini Devi Agrawal D/o Rai
Saheb Gopi Kishan Agrawal
(deceased)~~

Respondent Nos. 2(a to h), 3
4, 8 to 18 are deleted as per
Courts order dated
07.02.2024.

~~a. Shri Kailash Chunnilal Agrawal~~

~~b. Shri Suresh Chunnilal Agrawal~~

~~c. Shri Rajeev Chunnilal Agrawal~~

~~d. Smt. Premlata w/o Purushottam
Paldiwal~~

~~e. Smt. Shobha w/o Radhyeshyam
Agrawal,~~

- ~~f. Smt. Uma w/o Gopal Agrawal~~
- ~~g. Smt. Sharda w/o Alok Kedia~~
- ~~h. Smt. Rama Chunnilal Agrawal~~
- ~~3. Shri Ravishankar Agrawal S/o Late Rai Saheb Gopi Kishan Agrawal~~
- ~~4. Shri Kunjbihari Agrawal S/o Late Rai Saheb Gopi Kishan Agrawal~~
- 5. Shri Santosh Kumar Agrawal s/o Late Rai Saheb Gopi Kishan Agrawal aged about 80 years, Occ: Business, R/o. G-9, Carlisle Court, Clover Village, Wanawadi, Pune -40.
- 6. Shri Mahesh Kumar Agrawal S/o Late Rai Saheb Gopi Kishan Agrawal aged about 74 years, Occupation: Business, R/o Megmadhura, 3rd Floor Main Road, Shivaji Nagar Nagpur.
- 7. Shri Prakash Kumar Agrawal S/o Late Rai Saheb Gopi Kishan Agrawal, aged about 73 years, Occ: Business, R/o Wockhard Hospital, Gandhi Nagar, Nagpur.
- ~~8. Shri Manoj Agrawal S/o Late Rai Saheb Gopi Kishan Agrawal~~

- ~~9. Smt. Alka Ajit Saria d/o Late Rai Saheb Gopi Kishan Agrawal W/o Shri O.P. Ajit Saria Paradise~~
- ~~10. Smt. Rama Agrawal D/o Late Rai Saheb Gopi Kishan Agrawal W/o Ashok Agrawal~~
- ~~11. Smt. Uma Goenka W/o Santosh Goenka D/o Late Rai Saheb Gopi Kishan Agrawal~~
- ~~12. Shri Madan Mohan Jaipuria S/o. Late Shri Ghasi Lalji Jaipuria H/o. Late Smt. Gyarsidevi Jaipuria~~
- ~~13. Shri Shiv Kumar Jaipuria S/o Shri Madan Mohan Jaipuria & Late Smt. Gyarsidevi Jaipuria~~
- ~~14. Smt. Seema Goel D/o. Shri Madan Mohan Jaipuria & Late Smt. Gyarsidevi Jaipuria W/o Shri Om Prakash Goel~~
- ~~15. Smt. Padma Agrawal D/o. Madan Mohan & Late Smt. Gyarsidevi Jaipuria W/o Shri Suresh Agrawal~~
- ~~16. Shri Rajiv Agrawal S/o Shri Ravi Shankar Agrawal~~
- ~~17. Smt Sangeeta Agrawal D/o Ravi Shankar Agrawal W/o Manoj Agrawal~~

**18. ~~Smt. Babita Agrawal D/o Ravi~~
~~Shankar Agrawal W/o Dilip Agrawal~~**

RESPONDENTS

Mr. Pushkar Ghare, Advocate for the Petitioner.

Mr. S.V. Purohit, Advocate for the Respondent Nos. 1, 6 & 7.

Ms. Vidya Umale, Advocate h/f Mr. A.V. Khare, Advocate for the Respondent No.5.

CORAM : BHARAT P. DESHPANDE, J.

DATED : 4th MARCH, 2024

ORAL JUDGMENT :-

Heard.

2. Rule. Rule made returnable forthwith.

3. Heard finally with the consent of the learned counsels for the respective parties.

4. The only challenge in the present petition is the order rejecting the amendment application dated 28.11.2023.

5. Mr. Ghare, learned counsel for the petitioner, would

submit that the amendment application was moved only for giving description of three properties which are situated in UP. The main reason for not giving such description is that the plaintiff was not having knowledge of the description of such properties though there is reference in the plaint about the existence of such properties.

6. Mr. Ghare, learned counsel for the petitioner, would submit that the rejection of such application would seriously prejudice the right of the plaintiff and the observation that the nature of the suit will be changed, is totally incorrect.

7. Mr. Purohit, learned counsel appearing for the respondent Nos. 1, 6 and 7, would submit that the suit was filed in the year 2010, wherein the defence has raised objection that the plaint needs to be rejected for want of property description of three properties. In respect of such objection, the plaintiff failed to give due details and to get proper description of the properties. He submits, that after the evidence of plaintiff is over and when the defence stepped into the witness box, the present application was filed only to delay the matter. He

submits, that there is already directions from this Court to decide the suit in a time bound manner. Even such time fixed by this Court, the time is extended further only because the plaintiff is filing applications and delaying the proceedings.

8. The rival contentions fall for determination is as under:

9. The suit is filed for partition and separate possession, whereby describing the various properties. The description of three properties which are situated in UP are not disclosed in the plaint, however these properties are listed at serial No. IV, V and VI in the plaint (page 41).

10. The plaintiff stepped into the witness box by filing affidavit in evidence and he was cross-examined in detail. Such cross-examination show that the plaintiff failed to take proper steps to get the proper details/descriptions of these three properties situated in UP.

11. Mr. Ghare, learned counsel for the petitioner, submit that such descriptions are now found to be disclosed by the

defence, and therefore, in order to bring such description on record, he filed an amendment application.

12. The impugned order would go to show that though the learned Trial Court found that the proposed amendment is only about the description of three properties, which are listed in the plaint, observed that if such amendment is allowed, would change the nature of the suit. First of all, such observations of the learned Trial Court is completely unjustified and incorrect. The names of these three properties are disclosed in the plaint. Only the descriptions are not found in the original plaint. By way of present amendment, the plaintiff is trying to bring on record such description so that the suit could be effectively disposed of.

13. Besides, it cannot lost sight of that the suit is of the year 2010 and the amendment application is after the plaintiff stepped into the witness box and his evidence was over.

14. Mr. Purohit, learned counsel for the respondent Nos. 1, 6 and 7, submits that the witness from the defence side

is already examined.

15. The fact remains the suit is for partition and separate possession of the properties of the deceased. The plaintiff has disclosed at serial No. IV, V and VI in the plaint about the properties existing in UP. Now by way of proposed amendment, the plaintiff is trying to incorporate the description of such properties. Such amendment is not only necessary but requires for the purpose of proper adjudication of the civil suit. It is no doubt true, that the defendants objected to such amendment only because the plaintiff was found to be negligent in asserting such description of the properties from the year 2010 till filing of the application. The filing of such application is to bring on record the relevant details and description of the suit properties. Thus, the amendment nowhere changes the nature of the suit as observed by the learned Trial Court.

16. It is no doubt true, that there is a substantial delay in filing such application, but in order to do justice to the parties, the amendment needs to be allowed, subject to the costs of Rs.25,000/- (Rs. Twenty Five Thousand Only) to be

paid by the petitioner to the respondent Nos. 1, 6 and 7.

17. The impugned order is accordingly quashed and set aside and the amendment application filed by the plaintiff stands allowed, subject to deposit the costs of Rs.25,000/- (Rs. Twenty Five Thousand Only) by the petitioner before the learned Trial Court within a period of two weeks' from today.

18. The Petition is accordingly **allowed**.

19. Rule is made absolute in the above terms.

20. Pending application/s, if any shall stand disposed of accordingly.

(BHARAT P. DESHPANDE, J.)