



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

WRIT PETITION NO. 2306/2024

Vishwas S/o Mahadeo Chitare
Vs.
Gopal S/o Janrao Kankirad

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. A.D. Girdekar, Advocate for petitioner
Mr. Nikhil Parwani, Advocate for Respondent

CORAM: N.R. BORKAR, J.

DATED : 10th JULY, 2024

This petition takes exception to the order dated 11.01.2024, passed by the 2nd Joint Civil Judge, Senior Division, Akola, below Exh.89 in Regular Civil Suit No.204/2009.

2. The petitioner herein had filed the suit for permanent and mandatory injunction. The said suit was initially decreed. In appeal the decree of trial Court was set aside. The matter came to be remanded back to the trial Court. The petitioner after remand had filed application that permission be granted to amend the plaint. By the order impugned the trial Court has rejected the said application for amendment.

3. According to the petitioner the reason for filing the amendment application to bring on record certain subsequent developments.

4. Heard learned counsel for the petitioner and learned counsel for the respondent.

5. The learned counsel for the petitioner submits that the trial Court ought to have allowed the amendment application as construction on the suit property was done in breach of the decree passed by the trial Court.

6. On the other hand, the learned counsel for the contesting respondent submits that the alleged construction was done in the year 2016 and the application came to be filed on 29.11.2023. It is submitted that the learned trial Court was thus justified in rejecting the application.

7. It appears that the alleged construction over the suit property was carried out when the decree of trial Court was in force. The trial Court therefore ought to have allowed the application. In that view of the matter, the impugned order is set aside. The trial Court shall permit the petitioner to carry out the amendment in terms of application at Exh.89.

8. The petition is disposed of in the aforesaid terms. No costs.

(N.R. BORKAR, J.)

MP Deshpande