

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

WRIT PETITION NO.801 OF 2024

(Onkar s/o Khanu Jamunkar Vs. Ramesh s/o Pandurang Dhandekar and another)

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

Court's or Judge's orders.

Mr. A. J. Thakkar, Advocate for Petitioner.
Mr. A. S. Manohar, Advocate for Respondent Nos.1 & 2.

CORAM: R. M. JOSHI, J.

DATE: 17th JULY, 2025.

1. By consent of both sides heard finally at the stage of admission.
2. This petition takes exception to the order passed passed below Exh.26 in Regular Civil Suit No.62/2020 by the trial Court rejecting application filed by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure which sought subsequent events to be brought on record so also correction in the survey number of the suit property.
3. There is no dispute about the fact that the Regular Civil Suit No.62/2020 came to be filed against the defendants restraining them from causing interference from the suit property. The suit came to be resisted by the defendants. Application Exh.5 for interim relief filed by the plaintiff was rejected by the trial Court. Thereafter the application Exh.26 was filed by the plaintiff contending that after passing of order below Exh.5, the plaintiff is

dispossessed from the suit property. Apart from these pleadings, the pleading was also sought to be incorporated by correcting the survey number of the suit property from Survey No.12 to Survey No.12/1-A by claiming that the old Survey No.12 is now being known as Survey No.12/1-A. This application came to be resisted by the defendant. Since the trial Court rejected the application. Hence, this petition.

4. Learned Counsel for the petitioner submits that the trial Court has committed error in rejecting the application on the ground that the trial has commenced when the affidavit of evidence of the plaintiff is yet to be filed. It is his further contention that there cannot be any impediment in amending the plaint to incorporate subsequent facts. In so far as the correction of the survey number of the suit property is concerned it is his submission that it is always open for the defendant to contest the said during the course of the trial.

5. Learned Counsel for the defendant vehemently opposed the petition. According to him, having regard to the facts as they appear from the record so also considering the rejection of another suit filed by the plaintiff herein being Regular Civil Suit No.72/2021, there is no reason to cause interference in the impugned order.

6. There is no dispute about the fact that though the issues are framed by the trial Court, the affidavit of evidence of the plaintiff is yet to be filed on record. In view

of the judgment of the Division Bench of this Court in case trial cannot be said to have commenced in the instant case. Hence, the trial Court has committed error in rejecting the application on the said ground. There cannot be any impediment in allowing the incorporation of the facts which have occurred during the pendency of the suit. The only question which could be argued by the defendant is in respect of correction in the survey number of the suit property. Perusal of the written statement indicates that the said issue has already been raised by the defendant and hence it is always open for the defendant to contest the said claim of the plaintiff, even if the amendment is allowed.

7. One more aspect comes up for consideration is about the joining of LR's of Pandurang. There is no dispute about the fact that two legal representatives of the deceased Pandurang are already parties to the suit and as such there would not be no reason or justification in not joining other LR's. of Pandurang as defendants.

8. As a result of above discussion the impugned order stands set aside. Application Exh.26 stands allowed. Amendment be carried out within a period of four weeks from today it would be open for the defendants to file additional written statement to the amended petition.

9. Petition stands allowed.

(R. M. JOSHI, J.)