



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

WRIT PETITION NO. 1486 OF 2025

(Nanaji Dodku Sapate (dead) through LRs & Ors. Vs. Waman Gunaji Sapate & Ors.)

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

Court's or Judge's orders.

Mr. V.N. Morande, Counsel for the petitioners.

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CORAM : ANIL L. PANSARE, J.
MARCH 20, 2025

The challenge is to order dated 5/2/2025 passed below Exh. 117 by the Civil Judge Junior Division, Bramhapuri, in Regular Civil Suit No. 23/2015, seeking amendment in written statement.

2] The amendment was proposed when the matter was fixed for final argument. By way of amendment, the petitioners – original defendants proposed to raise a plea of limitation. The reason assigned for not filing the application prior to commencement of trial is of inadvertence.

3] The trial Court accordingly opined, and rightly so, that this reason cannot be said to be a reason complying with the aspect of due diligence. In other words, it is not the case of the petitioners that despite due diligence, the plea of limitation could not have been taken.

4] As such, it is the case of the petitioners that partition of suit fields has taken place prior to the year 1968. Despite such pleading, the petitioners did not raise

the plea of the limitation, may be because the suit filed by respondent nos. 1 and 2 – original plaintiffs was for partition and separate possession.

5] In the light of above, the trial Court observed that the suit is for partition and separate possession. The petitioners have taken a plea that the suit fields have been partitioned and accordingly issues were framed. The trial Court further noted that respondent nos. 1 and 2 have not challenged the sale-deeds allegedly executed by the parties to the suit. Accordingly, the trial Court observed that if the petitioners succeed to prove that the suit fields have been already partitioned, the suit would naturally fail. The proposed amendment was, therefore, found to be not necessary or is not of the nature that would go to the root of the case.

6] I find these reasons to be in consonance with the material placed before the trial Court as also what is provided under proviso to Rule 17 of Order VI of the Code of Civil Procedure, 1908.

7] No interference, therefore, is called for in the impugned order. The petition is dismissed in *limine*. No costs.

(ANIL L. PANSARE, J.)

Sumit