



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

WRIT PETITION NO.2232 OF 2024

(Pradeep s/o Bhagwatrao Jadhav and another Vs. Vithal s/o Mahadeorao Kshtriya
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. S. G. Karmarkar, Advocate for Petitioners.
Mr. Sunil S. Chauhan, Advocate for Respondent Nos.1 & 2.

CORAM: SMT. M. S. JAWALKAR, J.

DATE: 8th JANUARY, 2025.

Heard learned counsel for the petitioners and
learned counsel for respondent nos.1 and 2.

2. It is the contention of the petitioners/plaintiffs
that they are in possession of Gram Panchayat House No.11
having Mouza No.224, Khasara No.169 admeasuring 3600
sq. ft. along with old structure standing thereon. The suit is
filed for declaration that the plaintiffs have not encroached
upon any land of the defendants and as such the decree of
declaration restraining the defendants from interfering
plaintiffs peaceful possession over their property was
sought.

3. The defendants filed their written statement as
well as counter claim dated 01.07.2021. The petitioners also
filed written statement to that counter claim. Thereafter, the
petitioners moved an application under Order 6, Rule 17 of

the Civil Procedure Code for amendment of pleadings on 24.08.2023.

4. After hearing both the parties, the learned trial court rejected Exh.37 i.e. application for grant of permission to amend the plaint. The suit was filed for declaration and perpetual injunction. In para no.11 of the plaint, it is pleaded that the defendants have claimed their ownership on the basis of sale deed dated 08.05.1991. As such their interest is abundant in respect of sale deed dated 08.05.1991.

5. I have also perused para no.11 of the plaint. There is already averment in regard to sale deed dated 08.05.1991 on the basis of which defendant no.1 is claiming the ownership. It is also pleaded that the sale deed is *prima facie* fraudulent document. Not only this, they have also made averment in the counter claim. In reply to para no.2 of the counter claim. It is submitted that the question of challenge to sale deed dated 08.05.1991 could not have arrived at as the same is shows that it is false and fabricated document. The learned trial court has observed that it is specific plea of defendants that the said sale deed is in respect of another property, no concerned with the said property and there is no question of defendants relying on the said sale deed for proving their ownership over the suit property. There is no substance in the contention of the petitioner that after filing of written statement plaintiffs came to know about sale deed dated 08.05.1991.

The proposed amendment is not at all necessary to adjudicate and decide the suit. The issues are already framed. As such, I do not see any error or illegality in the order passed by the 2nd Joint Civil Judge, Junior Division, Kamptee, District Nagpur below Exh.37 in Regular Civil Suit No.52/2021 dated 30.01.2024.

6. Accordingly, the petition is dismissed. No order as to costs.

JUDGE