



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

WRIT PETITION NO.6414/2024

Yogesh s/o Ramesh Bansod and others

Vs.

Prafull s/o Sadashiv Buty through its Karta Shreekrishna s/o Prafulla Buty

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

Court's or Judge's orders

Shri A.A. Pande, Advocate for petitioners
Shri R.M. Sharma, Advocate for respondent

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

DATED : 31/01/2025

Heard learned Counsel for both the parties.

2. This petition is filed being aggrieved by the rejection of application for amendment of written statement below Exhibit-107 in RCS No.68/2016 by the learned Small Causes Court, Nagpur. By way of this amendment, he seeks permission to add paragraph (d) claiming therein that the plaintiff is not the owner of the suit property and the karta of the plaintiff had knowledge about the same prior to filing of the suit and similarly want to add paragraph Nos.62 and 31, all in respect of disputing the ownership of the plaintiff.

3. It needs to be noted here that earlier similar application was filed below Exhibit 80, though, it is contended by the petitioner that amendment application was not similar to the present amendment application, however, in sum and substance, petitioner

is disputing the ownership of plaintiff, on the basis of same notice published in the newspaper. The application to add party is also rejected.

4. It appears that earlier rejection of amendment application is challenged by the defendant in Writ Petition No.6599/2022. This Court dismissed the petition by order dated 15.03.2023 observed as under:

“2] The petition challenges the order dated 18.4.2022 (pg.65) whereby the application for amendment of the written statement at the stage when DW-3 was under the process of being examined, has been rejected by the learned trial Court.

3] Mrs. Bordikar-Pande, learned counsel for the petitioner submits that the amendment is necessary for the due decision of the suit and was necessitated in view of the advertisement published by Smt. Harshvardhini Buty Tomar in the local newspaper 'Hitvada' dated 30.1.2021, mentioning the filing of Civil Suit No. 381/2014 against the members of the respondent HUF, for bringing the discord between the respondent and the aforesaid persons regarding the title to the suit property.

4] Since the written statement filed by the present petitioners who are the defendants in RCS No. 68/2016, indicates that the rent of the premises in question have been paid to the respondent, the admission regarding the relationship of landlord and tenant is duly established. That being the position, the question of bringing any

discordant claim vis a vis the suit property by third party would clearly not be germane for deciding the matter in issue in the suit before the learned Small Causes Court, which is for eviction, on the basis of an admitted plea of the landlord and tenant relationship. In that view of the matter, I do not see any reason to interfere in the matter. The petition is accordingly dismissed. No costs."

5. From the said order, it also appears that the similar application on the basis of same advertisement published by Smt. Harshvardhini Buty Tomar was moved. As such, the issue is already considered and decided by the learned Small Causes Court as well as by this Court.

6. The learned Small Causes Court rightly observed that it is filed for ejectment and possession claiming defendants as his tenants. Whether suit property was partition or not is immaterial in the rent suit. Moreover, nobody approached to petition claiming rent as owner except the plaintiff.

7. Learned Counsel for respondent relied on ***Kanaklata Das and others Vs. Naba Kumar Das and others (2018) 2 SCC 352***, wherein the Hon'ble Apex Court laid down certain principles of law and the question involved before it in paragraph No.11 specifically paragraph No.11.3, which reads thus:

"11.3. Third, the question of title to the suit premises is not germane for the

decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See Ranbir Singh v. Asharfi Lal¹.)”

8. It is admitted by the defendant that he is paying rent to the plaintiff since long. In view of the above principle, it is sufficient to prove *prima facie* that there is an existence of relationship of landlord and tenants between plaintiff and defendant in relation to the suit property. In my considered opinion, there is no perversity or illegality in the order passed by the Small Causes Court, Nagpur. In fact, such repeated attempts to prolong the matter needs to be curbed. The matter is at the stage of evidence of defendant.

9. Despite of that and in spite of the fact that such earlier application for amendment is rejected and when the High Court confirmed the same, similar application is filed, it is nothing but abuse of process of law. As such, the petition deserves to be dismissed with costs.

10. The order dated 01.04.2024 in RCS No.68/2016 below Exhibit 107, passed by the learned Small Causes Court, Nagpur is hereby confirmed.

11. The learned Small Causes Court is hereby directed to assure that amount of Rs.2000/- shall be paid to the plaintiff or deposited in the Court within period of two weeks.

12. It is informed by the learned Counsel for defendants that defendant No.3 is expired and his legal representatives needs to be brought on record.

13. Learned Counsel for the plaintiff assures that he will take immediate steps.

14. As such learned Small Causes Court is hereby directed to decide the suit as early as possible, preferably within six months.

JUDGE

R.S. Sahare