



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

WRIT PETITION NO.8195 OF 2023

[Atul Digamber Chillarwar ..vs.. Zeelawati @ Leelabai Rushi Wairagade and Ors.]

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

Court's or Judge's order

Mr M. P. Khajanchi, Advocate for Petitioner.

CORAM : ANIL L. PANSARE, J.

DATE : 8th JANUARY, 2025.

1. Heard.
2. The contesting respondent No.1, who is original plaintiff, was served on 05.07.2024. The other respondents, who are original defendants, have been also served, however, none appears for them.
3. The petitioner – original defendant No.6 is aggrieved by order dated 08.09.2023 passed by the learned Joint Civil Judge Senior Division, Chandrapur in Special Civil Suit No.120 of 2009, thereby rejecting the application (Exhibit – 111) for amendment of written statement.
4. This Court, while issuing notice on 12.12.2023, has passed following order :

“The petition challenges the order below Exh.111 by which application for amendment of the written statement to introduce a plea that the present petitioner, who is defendant No.6 had purchased land admeasuring 0.52.40 HR of Survey No. 234, Mouza Morwa, by sale deed dated 07/6/2008 from the defendant Nos. 7 to 14, which had fallen to their share, has been rejected (page 136). It is contended, that since the defendant Nos.7 to 14 in their written statement filed on 02/12/2017, for the first time, after being added as party defendants, had mischievously admitted the claim of the plaintiff, the

necessity to place on record the sale deed dated 07/6/2008 had arisen, which has been permitted by the learned trial Court by the order below Exh.110 dated 06/2/2023 (page 125) observing that considering the nature of the suit and the prayer against the present petitioner / defendant No.6, it is necessary to grant permission to produce the documents for complete adjudication of the dispute between the parties, it is contended, that the application for amendment raising the above plea ought to have been allowed as it is material for deciding the matter in issue in the suit which is for partition, separate possession and declaration in which the land of survey no.234 is the subject matter, which now stands transferred to the petitioner in its entirety on account of the sale deed dated 07/6/2008. It is further contended, that the suit has to be decided by the learned trial Court on the basis of the correct factual position and since the sale deed has already been permitted to be placed on record, an averment to that effect would be necessary to consider the sale deed for deciding the subject matter of the suit. He further submits that any prejudice which may be caused to the respondents on account of delay, can be compensated by suitable costs, for which the petitioner is willing to deposit a sum of Rs.50,000/- in this Court.

2. Issue notice for final disposal, returnable on 21st December, 2023, subject to the cost of Rs.50,000/- shall be deposited till 15th December, 2023.

3. Since the matter is stated to be listed before the learned trial Court on 15th December, 2023, on an application for adjournment filed by the petitioner, the learned trial Court shall adjourn the matter beyond 21st December, 2023.

3. It is made clear that in case the amount of Rs.50,000/- is not deposited before this Court on or before 15th December, 2023, the matter shall be listed on 18th December, 2023 for dismissal.”

5. As could be seen, the order describes the necessity to amend the written statement. The learned Trial Court has permitted the petitioner to produce on record the sale deed observing that the

nature of suit is such that permission to produce sale deed will be helpful for complete adjudication of the dispute. The petitioner - defendant No.6 intends to put forth plea to that effect which has been not allowed by the Trial Court.

6. In my view, once the Trial Court has opined that the production of sale deed is necessary, it would have been in the interest of justice to permit the petitioner to amend the written statement for complete adjudication of dispute. In the circumstances, it can be said that the production of sale deed and averment to that effect would go to the root of the case and therefore, the Trial Court ought to have permitted the amendment despite commencement of trial.

7. The aspect of delay could be dealt with by imposing cost upon the petitioner, which the petitioner has deposited with this Court. The respondent No.1 will be entitled for the said cost. The Registry shall remit the amount of Rs.50,000/- deposited by the petitioner to the Trial Court, which shall permit the respondent No.1 - original plaintiff to withdraw the said amount.

8. With the above observation, the petition is **allowed**. The impugned order dated 08.09.2023 passed below Exh-111 by the learned Joint Civil Judge Senior Division, Chandrapur, is hereby quashed and set aside. The application Exh-111 claiming amendment is allowed. The amendment be carried out within fourteen working days from today. Amended copy of written statement be served on other side.

9. The petition is disposed of in above terms.

JUDGE