

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

WRIT PETITION NO.186 OF 2024

(Sarita Abhay Bhotika Vs. Gitadevi Badrivishal Bhartiya and others)

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

Court's or Judge's orders.

 Mr. N. B. Bargat, Advocate for Petitioner.
 Ms. Pooja N. Kothekar, Advocate h/f Ms. S. K. Paunikar, Advocate for
 Respondent No.18.

CORAM: R. M. JOSHI, J.

DATE: 3rd JULY, 2025.

1. This petition takes exception to order dated 25.07.2023 passed below Exh.127 in Special Civil Suit No.597/2017 whereby the application under Order VI, Rule 17 of the Code of Civil Procedure, 1908 filed by the plaintiff for amendment to the plaint came to be rejected.

2. Admittedly, the suit is filed by the petitioner – plaintiff for partition and separate possession of the suit property. Respondent – original defendant resisted the said suit. Issues were framed the evidence has already commenced before the learned trial Court.

3. The plaintiff filed application Exh.127 with specific contention that on impleadment of the intervenor as a party defendant to the suit by order dated 05.09.2022 it came to the knowledge of the plaintiff about execution of the sale deed dated 09.05.2014 and power of attorney. This

fact/contention of the applicant – plaintiff has not been disputed by the defendant. The only defence of the defendant in their reply was that the trial has already commenced and therefore at this stage application is not maintainable.

4. Heard learned Counsel for both sides.

5. Perusal of the order impugned indicates that the learned trial Court essentially proceeded to reject the application with observation that the relief for declaration and cancellation of the document exhibited in the year 2014 is barred by limitation. The learned trial Court thus has gone into the merit of the amendment which is not permissible at this stage. Needless to say that it was open for the learned trial Court if there was material on record to indicate knowledge of the plaintiff in respect of the said document at the relevant time of its execution. However, once the specific plea is raised by the plaintiff about she has no knowledge of this document till recently i.e. when the order came to be passed on intervention application in the year 2022, and more particularly when this fact is not in dispute, it was not open for the learned trial Court to reject the application while deciding the merit of the amendment.

6. Even if it is considered that the application is being filed after the commencement of the trial, the fact that on allowing the application for intervention the petitioner plaintiff got the knowledge of the document in question. As such on the basis of the subsequent events which have

occurred during the course of the trial the application came to be filed. In the circumstances, there was no reason or justification for the learned trial Court to reject the application.

7. In view of the above, the petition stands allowed. The impugned order is set aside stands. Exh.127 is stands allowed. It is clarified that all the issues in respect of the entitlement of the plaintiff to seek relief on the basis of amendment are kept open.

(R. M. JOSHI, J.)

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