



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

WRIT PETITION NO. 4818/2024

Jamil Hussain Biabani

...VERSUS...

Mohd. Abid Hussain Biabani & others

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

Court's or Judge's orders

Shri J.H. Biabani – Petitioner in person

Shri M. Anilkumar, Advocate for the Respondent No. 6

CORAM :- M.S. JAWALKAR, J.
JANUARY 13, 2025

(1) Heard the Petitioner in person and learned Counsel for the Respondent No. 6.

(2) The Petitioner has challenged the order dated 11/06/2024 passed by the learned Civil Judge Senior Division, Chandrapur below Exhibit 279 in Regular Civil Suit No. 355/2004. The said Application below Exhibit 279 was filed by the Defendant No. 5 for permitting him to make an amendment in the written statement under Order VI Rule 17 of the Civil Procedure Code, 1908.

(3) It is contended that the Defendant No. 1 in the Regular Civil Suit No. 355/2004, in his life time, has filed Regular Civil Suit No. 115/2004 against the present Plaintiff for declaration and permanent injunction in respect of the land bearing Survey Nos. 15/2 and 15/8 situated at

Koshtala, Tahsil Rajura, District Chandrapur on the basis of Ekrarnama dated 25/01/1990. In that Suit, various issues were framed in respect of the land bearing Survey Nos. 15, 24, 25 & 26 situated at Koshtala. The said Suit was decided by the judgment and decree dated 28/03/2023. It also appears from the order below Exhibit 54 that Regular Civil Suit No. 355/2004 was stayed till disposal of Regular Civil Suit No. 115/2004. It also appears that the Plaintiff – Petitioner extended no objection for staying the same. As there were findings on various issues in the judgment dated 28/03/2023, which as per the Defendant No. 5 were relevant in the pending Regular Civil Suit No. 355/2004, he moved an Application for amendment to add Paragraph Nos. 19-A and B in the written statement. The said Application was strongly opposed by the Plaintiff. After considering the rival submissions, the learned Trial Court allowed the amendment Application as by way of the proposed amendment, the Defendant No. 5 wanted to bring on record the pleading in respect of bar created by principle of *res-judicata*. The learned Trial Judge has duly considered the citations placed on record, so also the provisions of Order VI Rule 17 of the Civil Procedure Code, 1908.

(4) As such, I do not see any illegality or perversity in the impugned order. Moreover, it is the amendment Application which is allowed and there is no final decision on any issue raised in the amendment

Application. The party in person is having right to move Application for consequential amendment, if required. As such, there is no substance in the Writ Petition.

(5) Hence, the Writ Petition stands **dismissed**. Liberty is granted to the Petitioner to move Application praying for consequential amendment, if he so desires.

(6) As the Suit is of the year 2001 and re-numbered in the year 2004, whatever consequential amendment the party has to seek, the same shall be done within a period of two weeks from today.

(7) The learned Trial Judge is directed to decide the said Application for amendment within a period of two weeks thereafter. The learned Trial Judge is further directed to take all efforts to decide the Suit as expeditiously as possible, preferably within a period of three months.

(M.S. JAWALKAR, J.)