



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

WRIT PETITION NO.5409/2024

Smt. Heena @ Sarita w/o Chandraprakash
Godhani, Aged about 48 years,
Occ. Housewife, Residing Near Arya Samaj
Mandir, Main Road, Jaripatka, Nagpur.

... PETITIONER

...VERSUS...

1. Smt. Kamla wd/o Kanhaiyalal Bachwani,
Aged about 67 years, Occ. Housewife,
Resident of Block No.1, Kukreja
Nagar, Nara Rorad, Nagpur
2. Amit s/o Kanhaiyalal Bachwani,
Aged about 41 years, Occ. Business,
Resident of Block No.1, Kukreja Nagar,
Nara Road, Nagpur.
3. Smt. Leena @ Poonam w/o Bhushan
Khushalani, Aged about 44 years,
Occ. Housewife, R/o. Opposite
Chanduram Darbar, Sapna Building,
Jaripatka, Nagpur.
4. Smt. Anjali @ Bindiya w/o Yogesh
Kewalramani, Aged about 42 years,
Occ. Housewife, R/o. Near Mahatma
Gandhi School, Gate No.2, Jaripatka,
Nagpur.
5. Smt. Riddhi @ Hema w/o Kamal
Manglani, Aged about 37 years,
Occ. Housewife, R/o. Hitesh Tower,
Near Jagat Lawn, Ring Road,
Jariptaka, Nagpur.

6. Ku. Arti d/o Kanhaiyalal Bachwani
Aged about 35 years, Occ. Household,
R/o. Near Dayanand College,
Jaripatka, Nagpur.
7. Smt. Veena @ Lajwanti w/o Deepak
Kumar Amarnani, Aged about 50 years,
Occ. Household, R/o. Opposite Shiv
Orqid, M S Colony, Bhilgaon, Nagpur.
8. Shri Abhay s/o Suryabhan Pethe,
Aged about 43 years, Occ. Agriculturist,
Resident of Padole Nagar, Wathoda
Road, Nagpur.
9. Shri Duneshwar s/o Suryabhan Pethe,
Aged about 49 years, Occ. Agriculturist,
Resident of Padole Nagar, Wathoda Road,
Nagpur.

...RESPONDENTS

Mr. Sameer Sohoni, Advocate along with Mr. S. D. Kalyani,
Advocate for petitioner.

Mr. Abhijeet Khare, Advocate for respondent Nos.1, 2, 3 to 5 & 6.

Mr. D.T. Shinde, Advocate for respondent Nos.8 & 9.

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

DATE OF RESERVING THE JUDGMENT : 28/01/2025

DATE OF PRONOUNCING THE JUDGMENT : 21/02/2025

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally
with consent of the learned Counsel for the parties.

2. Being aggrieved by the order dated 03.04.2024 passed below Exhibit-57 in Regular Civil Suit No.2650/2012, thereby rejected the application by observing that the plaintiff has not made out any new ground which permit her to file application by claiming same reliefs.

3. The petitioner is the plaintiff whereas the respondents are the defendants in Regular Civil Suit No.2650/2012 (earlier registered as Special Civil Suit No.667/2011) filed for Declaration, Permanent and Perpetual Injunction, Partition and Separate Possession, Cancellation of three Deeds of Relinquishment dated 04/03/2010 as well as Declaration of two sale deeds dated 01/09/2010 as illegal and null and void.

4. Petitioner's father died on 15/06/2009 leaving behind him the petitioner and respondent Nos.1 to 7 as his legal heirs and therefore, these parties are co-owners of the suit properties and have share in it. It is further submitted by the petitioner that the defendant nos.1 and 2 has cheated her by executing the three relinquishment deeds in respect of the suit properties in favour of respondent No.2 by mis-representing her that those deeds were

executed as 'Registered Partition deed'. After disclosure of the relinquishment-deeds of respondent Nos.1 and 2, the petitioner filed the above said suit. The defendants opposed the suit claim by filing their written statements. It is the case of the petitioner that her father agreed to purchase the suit property (Schedule-E) from one Bhimsen s/o Rupchand Waswani. Full consideration of the property was paid by the father of the petitioner to Bhimsen on 21/03/1997 itself and at that time respondent No. 2 was minor. On 10/07/2009 the respondent No.2 has executed agreement to sale of that property with Bhimsen. In the said agreement also it was mentioned that he was minor and the consideration was paid on 21/03/1997.

5. It was further submitted that the respondent no.2 had not purchased the said property, but by acting as a Power of Attorney holder of Bhimsen, the said property was sold to one Reeta Nandlal Chelwani by Registered Sale Deed dated 01/09/2010. The petitioner plaintiff filed an application for grant of permission to amend the plaint under Order 6 Rule 17 of Code of Civil Procedure (CPC) and wanted to amend the pleadings and prayer clauses and

also requested for adding the purchaser and seller of the properties mentioned in Schedule 'E'. The Trial Court by its order dated 23/02/2023 rejected the said application (Exhibit-48). Being aggrieved by the same the petitioner challenged the said order before this Court by filing Writ Petition No. 2684/2023. This Court by its order dated 25/04/2023 rejected the said Writ Petition.

6. The petitioner earlier also had filed Regular Civil Suit No. 4672/2012 for Declaration and Permanent Injunction against *Reeta Chelwani and Kunal Chelwani*. In the said suit, the petitioner sought a declaration that these two persons have no right and authority to make and develop or erect any construction over the suit properties. The petitioner has also sought permanent injunction against these two persons for erecting any construction or developing the property. The suit property in this suit is mentioned in Schedule 'E' of Regular Civil Suit No.2650/2012. By the application dated 20/09/2023, the petitioner sought permission to withdraw the Regular Civil Suit No.4672/2012 with permission to file fresh suit on the ground that the suit is defective and the defect is not curable. Learned 2nd Joint Civil Judge, Junior Division,

Nagpur vide order dated 12/01/2024, permitted the petitioner to withdraw the suit with liberty to file afresh on the basis of same cause of action. After withdrawal, the petitioner moved an application vide Exhibit-57, under Order 1 Rule 10 of Code of Civil Procedure for addition of parties and consequential changes in the plaint. The respondents opposed this application by filing their reply. Learned Joint Civil Judge, Junior Division, Nagpur vide order dated 03/04/2024, rejected the application Exhibit-57 filed by the petitioner. The said order is the subject matter of challenge in the present petition.

7. Learned counsel for the petitioner contended that no sufficient and proper reason is assigned by the learned Trial Court while passing the impugned order dated 03/04/2023. It is further contended that the petitioner has withdrawn the Regular Civil Suit No.4672/2012 filed against Reeta Chelwani and Kunal Chelwani and thereafter, moved an application Exhibit-57. The only relief the petitioner wants is to add the seller and purchaser of suit property mentioned in Schedule 'E'. Already the petitioner has taken pleading in the plaint about the illegal transaction entered into by

the seller and purchaser of the suit property mentioned in Schedule 'E' and has also sought relief of declaring the sale deeds as illegal and void. For proper adjudication of the matter, these persons are very much necessary and are required to be made as party defendants. In the absence of these persons as party defendants, there is a possibility of failure of the suit in respect of property mentioned in Schedule 'E'. The learned lower Court erred in considering all these and passed an impugned order which needs interference and which needs to be set aside.

8. Learned counsel for the respondents submitted that learned lower Court after appreciating the fact that there was suppression of facts on the part of petitioner about rejection of earlier application for same relief has rightly rejected the application of the petitioner and passed an order which needs to be confirmed.

9. Learned Counsel for respondents relied on following citations:

- 1) **Y.B. Patil and ors. Vs. Y.L Patil**, reported in **1976 (4) SCC 66**.

2) Anandrao Raghoji Malewar Vs. Heilmittel Pharmaceuticals, reported in 2005 (4) Mh.L.J. 868

10. Heard both the parties, considered documents placed on record and citations relied on by the parties.

11. The present writ petition is filed challenging the order dated 03.04.2024, passed below Exhibit-57 in Regular Civil Suit No.2650/2012 by the learned Joint Civil Judge, Junior Division, Nagpur. The petitioner herein moved an application under Order I, Rule 10 for addition of party and correction in plaint read with Section 151 of the CPC. The contention of the plaintiff is that amendment is carried out as per the order of the Court seeking relief of declaring sale deeds are void. However, due to inadvertence the prayer was not made for addition of defendant Nos.10 to 13 as they are sellers and purchasers. In the plaint proposed defendant Nos.10 to 13 to be added as party. It is further contended that it was noticed while they were preparing the evidence. She seeks permission to amend and add para 7(e) to 7(g) and prayer clauses (C-2) and (E-2) in plaint.

12. The defendants opposed the application and contended that the plaintiff has filed application at Exhibit-48 for amendment of plaint and addition of parties, which was rejected by order dated 23/02/2023. The said order was confirmed by the High Court in Writ Petition No.2684/2023. The plaintiff has suppressed this material fact from the Court. I have also perused the order passed below Exhibit-48, it was for amendment in the plaint adding paras 7(a) to 7(g) and to amend prayer clause.

13. The learned 3rd Joint Civil Judge, Junior Division, Nagpur observed by rejecting the said application that the plaintiff in application nowhere mentioned as to why she has not pleaded said fact in the plaint at the time of filing of suit. The plaintiff has filed suit in the year 2012 and wants to make amendment in respect of transactions taken place in the year 2009 and 2010 which were taken place before filing of suit. The plaintiff is well aware about all such facts even before filing of suit, which she wants to introduce now. The issues have already been framed in the suit and this application was moved in the year 2023, it is not made clear that why it was not filed earlier. It is further observed by learned Trial

Court that by way of this amendment application, the plaintiff wants to make amendment in the title of suit itself and also wants to substitute the new pleadings, which are not subsequent events.

14. The learned 3rd Joint Civil Judge, Junior Division, Nagpur rightly observed that plaintiff has not made out any new ground which permit her to file the application by claiming said relief. It also caused delay to decide the suit. The matter is 10 years old. As such the application came to be rejected.

15. Learned Counsel for the respondents submitted that it operates as *res judicata*, he relied on ***Y. B. Patil Vs. Y. L. Patil*** (supra), wherein the Hon'ble Apex Court held that,

“It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding.”

16. Learned Counsel for the respondents also relied on ***Anandrao Raghoji Malewar*** (Supra), wherein this Court held in para 12 as under :-

“12. Thus, considering the aforesaid well recognised principles of law, the objection sought to be raised by the petitioner through amendment is hit by res judicata. Otherwise, the party interested in delaying the decision of the suit will be in position to move identical or similar applications on several occasions during pendency of suit and the Courts will be helpless spectators unable to monitor and control it. For same reasons, the party cannot be permitted to reopen the same issue indirectly by moving application of different type or in different form like in the form of amendment application as is done by present petitioner. The procedural law and doctrine evolved with a view to put an early end to the litigation cannot be permitted to be frustrated in this fashion. Petitioner ought to have taken appropriate timely steps for restoration of his Order 7, Rule 11(d) objection or to challenge it, but he cannot be permitted to move in circles in same suit to the prejudice of respondent/plaintiff”.

17. In view of these judgments, it can be seen that the principles of *res judicata* can be applied at a subsequent stage of the proceedings in respect of orders already rendered final in those very proceedings. It would be binding at the subsequent stage of that proceedings. Thus, in my considered opinion, the learned Trial Court was justified in refusing the application to amend the suit in

view of principles of *res judicata* as applicant seeking same relief which was earlier requested vide application at Exhibit-48 and confirmed up to the High Court in Writ Petition No.2684/2023. There is no error whatsoever in the order passed by the learned Trial Court. As such, no interference is warranted. In view of that, the Writ Petition stands **dismissed**. No costs.

(SMT. M.S. JAWALKAR, J.)

Kirtak