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

WRIT PETITION NO.7711 OF 2018

Smt. Yashodabai Wd/o Tarachand Tambulkar and others
Vs.
Smt. Sitabai Wd/o Govinda Tambulkar 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. G. S. Sengar, Advocate for petitioners.

CORAM : AVINASH G. GHAROTE, J.
DATE : 23/08/2022

1. Heard Mr. Sengar, learned counsel for the petitioners.

2. The petition challenges the order dated 15.1.2018 below Exh.74, an application filed by the plaintiffs/petitioners for amendment of the plaint, on the ground that the property in question was not the ancestral property, but was the self acquired and joint property.

3. Admittedly, no document to indicate this is placed before the learned trial Court before passing of the impugned order. The application at Exh.74, however, indicates that after the closure of the evidence of the plaintiffs, it has been discovered by them that the property in question i.e. old Survey No.120/3 was not the ancestral property, but had been jointly purchased by Tarachand and Govinda from Baburao Vaidhya and

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others in the year 1977.

4. The learned trial Court by the impugned order has rejected the application on the ground that allowing of the application shall cause prejudice. It is however contended by Mr. Sengar, learned counsel for the petitioners that the rejection of the application shall result in the suit being decided on a factually incorrect premise, which is impermissible in law.

5. In spite of service, none appears.

6. Though, the proviso to Order 6 Rule 17 of the Code of Civil Procedure prohibits the amendment to be allowed, unless the requirement of the proviso are fulfilled, in the instant case, the application at Exh.74 categorically states in para 1 the discovery of the sale deed after the evidence of the plaintiffs was laid.

7. Even otherwise, it would be material to note, that the suit is for partition and separate possession between the legal heirs of Tarachand and Govinda, in light of which, the granting of the amendment would not change the nature of the proceedings, rather it would result in bringing the correct factual position on record. Any prejudice which may be caused to the defendants can always be compensated in terms of money, in view of which, the impugned order is hereby quashed and set aside and the application below Exh.74 is allowed,

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subject to the cost of Rs.10,000/- (Rs.Ten Thousand) to be paid as condition precedent to the District Services Legal-Aid Committee, Nagpur.

8. The petition is accordingly allowed in the above terms.

JUDGE

Sarkate

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