



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2664 OF 2016

1. Shalan Kashinath Shinde@
Shalan Haribhau Pharate,
Age-48 years, Occu.-Nil,
R/o. Loni Vyankanath, Taluka: Shrigonda,
District Ahmednagar.

...PETITIONER

VERSUS

1. Ramdas Shamrao Jagtap,
Deceased Through his LRs
- 1-A. Sulochana Kashinath Shinde
@ Sulochana Ramdas Jagtap,
Age : 48 years, Occu.: Household,
R/o.: Shanikrupa Housing Society,
Mohini Nagar, Kedgaon,
Taluka & District : Ahmednagar.
- 1-B. Dipti Vinod Vare @ Dipti Ramdas Jagtap,
Age: 38 Years, Occupation: Service,
R/o.: Jategaon, Taluka: Karmala,
District: Solapur.
- 1-C. Sneha Ramdas Jagtap,
Age: 25 Years, Occupation: Education,
- 1-D. Sagar Ramdas Jagtap,
Age: 23 Years, Occupation: Education,
Resp. Nos.1-C & 1-C Both
R/o.: Shanikrupa Housing Society,

Mohini Nagar, Kedgaon,
Taluka & District: Ahmednagar

2. Soluchana Kashinath Shinde@
Soluchana Ramdas Jagtap,
Age: 41 Years, Occu.: Agriculturist,
3. Kamal Kashinath Shinde @
Kamal Shivaji Yadav,
Age: 33 Years, Occu.: Household,
Respondent Nos.2 & 3
R/o.: Shanikrupa Housing Society,
Mohini Nagar, Kedgaon,
Taluka & District: Ahmednagar.
4. Narsing Appasaheb Shinde,
Age: 41 Years, Occu.: Agriculturist,
R/o.: Loni Vyankanath, Taluka: Shrigonda,
District: Ahmednagar.

...RESPONDENTS

Advocate for the petitioner : Mr. P. B. Shirsat

Advocate for Respondent Nos.1-A to 1D & 4 : Mr. R. R. Karpe

CORAM : PRAFULLA S. KHUBALKAR, J.
RESERVED ON : 4th APRIL 2025
PRONOUNCED ON : 25th APRIL 2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petition takes exception to order dated 18.02.2016 passed by the Court of Civil Judge, Senior Division, Shrigonda, on an application at Exhibit-112 in Special Civil Suit No.06 of 2005. The petitioner is original plaintiff and respondents are original defendants in the suit. For the sake of convenience, the parties are referred according to their status in the civil suit. By the impugned order, the Trial Court has rejected the application for amendment filed by the original plaintiff seeking amendment of plaint for substituting name of one of the legal representative of deceased defendant No.1, adding names of three other members of the family and for incorporating pleadings and prayer for partition of the suit property.

3. The facts leading to instant petition are briefly stated below :

(i) The petitioner is original plaintiff who had filed suit for declaration, perpetual injunction and cancellation of instrument, vide Special Civil Suit No.06 of 2005 before the Civil Judge, Senior Division, Shrigonda. The suit is in respect of land Gat No. 897, area 1 Ht. 36 R situated at Loni Yankanath which is claimed to be ancestral property of

father of the plaintiff. Original defendant Nos.2 and 3 are real sisters of the plaintiffs and original defendant No.1 is husband of original defendant No.2.

(ii) The suit was contested on merits by the defendants. By judgment and decree dated 26.03.2010, the suit came to be partly decreed. The Trial Court declared that the plaintiff had 1/6th share in the suit property along with a declaration that the sale deed executed in favour of defendant No.1 by deceased Kashinath and in favour of defendant No.4 by defendant No.1 was not binding on 1/6th share of the plaintiff.

(iii) Being aggrieved by the judgment and decree, the original defendant No.1 filed Appeals bearing First Appeal No.1255 of 2010 and 1249 of 2010 under Section 96 of C.P.C which were transferred to the District Court and they came to be registered as Regular Civil Appeal No.417 of 2012 and 418 of 2012.

(iv) These appeals came to be decided finally by judgment and decree dated 05.10.2015 by which the Regular Civil Appeals are allowed and the matter came to be remanded to the Trial Court to decide the suit

afresh.

(v) The original plaintiff filed an application dated 22.01.2016, vide Exhibit-112 in Special Civil Suit No.06 of 2005 seeking amendment of plaint to incorporate name of one of the legal representative, Hirabai Shamrao Jagtap, whose name was not earlier included inadvertently and for incorporating the names of other members of their family. By this amendment application, the plaintiff has proposed to add other pleadings and prayer for claiming relief of partition.

(vi) The original defendant Nos.2 and 4 opposed the application for amendment by filing their reply.

(vii) By order dated 18.02.2016, the Trial Court passed an order thereby granting liberty to the original plaintiff to substitute name of the legal representative by filing separate application and the prayer for amendment of other portion is rejected.

(viii) Feeling aggrieved by this order, the petitioner has filed the instant petition.

4. Adv. P. B. Shirsat, learned counsel for the petitioner vehemently submits that the impugned order rejecting amendment is unsustainable in law as the Trial Court has failed to consider that the First Appellate Court has remanded the matter to the Trial Court specifically observing that in absence of pleadings, issues and evidence, the findings with respect to partition could not have been rendered. He submits that, in view of observation of the First Appellate Court, vide para 3 of the operative portion, the plaintiff has got an opportunity to amend the plaint to incorporate the proposed amendment. He submits that the proposed amendment is necessary for deciding the real controversy involved in the suit and since the issue of entitlement of rights of the parties is involved, seeking amendment to incorporate prayer for 'partition' will not change the nature of the suit. To buttress his submission, he relies on judgment of Hon'ble Supreme Court in the case of *Life Insurance Corporation of India vs. Sanjeev Builders* reported in *AIR 2022 Supreme Court 4256*.

5. Per contra, Adv. R. R. Karpe, learned counsel for respondent Nos.1-

A to 1-D and 4 strongly opposes the petition. His primary contention is that the proposed amendment to add new parties and new pleadings with prayer, changes the nature of the suit. He further submits that the original suit is of the year 2005 and the amendment application is filed in 2016 without specifying any reason for this inordinate delay. He submits that the issues framed by the Trial Court do not cover the issue of entitlement of the plaintiff for partition and therefore introducing new pleadings and prayer definitely amounts to change of the nature of the suit. He further submits that the suit property was purchased by the defendants vide sale deeds dated 30.08.2001 and 31.01.2005 which cannot be challenged by incorporating totally new pleadings. He also vehemently submits that the proposed amendment causes serious prejudice to the rights of the defendants and demonstrates lack of due diligence and therefore disentitles plaintiff to amend plaint in view of proviso to Order VI Rule 17 of Civil Procedure Code.

6. Rival Contentions now fall for my consideration :

I have considered the rival submissions and perused the papers.

7. Regular Civil Suit No.06 of 2005 was for cancellation of instrument, declaration and perpetual injunction, which was filed against four defendants. The suit was contested on merits and it came to be partly decreed holding thereby that the sale deeds executed by deceased Kashinath and original defendant Ramdas were not binding on the share of the plaintiff in the suit land. Pertinently, the Trial Court has also declared that the plaintiff had 1/6th share in the suit land, although no relief of declaration of share or partition was claimed in the suit.

8. True it is, the First Appellate Court had remanded the suit by observing that in absence of any pleadings, issues and evidence, the decree passed by the Trial Court was not good either for the plaintiff or for the defendants. Having observed specifically (in concluding para 11 of the judgment of Appellate Court) that the Civil Judge, Senior Division, Shrigonda has committed grave error in passing the decree for partition, declaration and cancellation of sale deed, the Appellate Court has remanded the suit to the Trial Court to decide it afresh on giving opportunity to both the parties. On perusal of the judgment passed by

the Appellate Court, it is clear that the Appellate Court found the decree passed by the Trial Court with respect to partition as unsustainable. However, for giving an opportunity to both the parties, the suit is remanded to the Trial Court by observing in para 3 of the operative order that 'the learned Trial Court is directed to decide the suit afresh on giving an opportunity to both the parties, if they desire'. The observation of the Appellate Court that in absence of any pleadings, issues and evidence, the decree with respect to declaration of share was passed by the Trial Court clearly shows that the Appellate Court found the decree of Trial Court unsustainable in law. The Appellate Court has not granted opportunity to the original plaintiff to introduce amendment of any nature for claiming new reliefs. At the most, as an effect of remand, the parties could incorporate the pleadings with respect to the prayers which were sought in the original suit.

9. In view of these circumstances, the application for amendment if considered, would show that the plaintiff has proposed to amend the plaint by adding name of one of the legal representative and also three

other persons as defendant Nos.5 to 7. The plaintiff has also proposed to add various pleadings with respect to the nature of the suit property, cause of action and additional prayer for relief of 'partition'. A perusal of amendment application shows that the plaintiff is attempting to add new parties, new cause of action (as mentioned in para 6 of the amendment application), new pleadings about the suit property and relief of partition of the suit property. It is necessary to note that, by virtue of sale deeds dated 30.08.2001 and 31.01.2005, a part of the suit property was already sold in favour of respondent Nos.1-A to 1-D and 4. Although vide the original suit, challenge was raised to the sale deeds, now allowing the plaintiff to incorporate new pleadings and new prayer clause will cause prejudice to the rights of the defendants to the extent of their ownership of the suit property. The amendment application does not at all disclose any reason as to why the proposed amendments were not incorporated in the plaint. The amendment application thus do not disclose any due diligence on the part of the plaintiff. In the suit in question, the trial had commenced in the year 2007 itself when issues were framed and the plaintiff had not filed any amendment application

prior thereto, which disentitle the plaintiff in view of proviso to Order VI Rule XVII of C.P.C to claim amendment as sought for. It is pertinent to note that although, the Trial Court has remanded the suit, the remand has to be considered as a limited remand to decide the real controversy involved in the suit. In the garb of application for amendment, the plaintiff is attempting to add new defendants and new prayer clause which, in my opinion amounts to change in the nature of the suit.

10. As regards, the plaintiff's entitlement to claim relief of partition and/or separate possession of the property of their family, the plaintiff is not precluded from filing appropriate proceedings by filing a separate suit for partition and separate possession. The attempt on the part of the plaintiff to amend the instant suit will definitely cause prejudice to the rights of the defendants who have purchased the property in the year 2001 and 2005 as stated above. Crucial to note, the defendants have disclosed their defence in their Written Statement and even the evidence was lead by both the parties when the suit was decided. Pertinent to note, no amendment was moved during the pendency of Civil Suit and

the Appeal. As such, allowing the plaintiff to put up a completely new case with a new relief will cause prejudice to the rights of the defendants.

11. The position of law as laid down in the judgment of Hon'ble Supreme Court in the matter of *Life Insurance Corporation of India vs. Sanjeev Builders* (supra) is not at all disputed. However, the same cannot be applied in the facts and circumstances of the instant case. The Hon'ble Supreme Court has clarified the position that the prayer for amendment is to be allowed if amendment is required for effective and proper adjudication of the controversy and to avoid multiplicity of proceedings. However, with a rider that the amendment does not result into injustice to the other side or when the amendment does not change the nature of the suit or the other side does not lose a valid defence. In the instant case, the proposed amendment changes the nature of the suit and causes prejudice to the rights of the defendants. Therefore, with respect, the decision in the matter of *Life Insurance Corporation of India vs. Sanjeev Builders* (supra) does not come in aid of the petitioner. In the

instant case, in view of the prejudice likely to be caused to the defendants, I am of the opinion that the amendment application was liable to be rejected.

12. The impugned order takes into consideration the factual and legal aspects. The learned Trial Court has considered the aspect of due diligence and the possibility of change in the nature of the suit and by a reasoned order, the amendment application is rightly rejected.

13. In the light of above mentioned factual and legal aspects the instant petition deserves to be dismissed and the same is accordingly dismissed. No order as to costs.

14. Rule stands discharged.

15. After the judgment is pronounced, learned counsel for the petitioner requested for expediting the Civil Suit. In view of the fact that the suit is of the year 2005, it is in the interest of justice to expedite the suit by directing the Trial Court to decide the Civil Suit within a period

of six (06) months. The Court of Civil Judge Senior Division, Shrigonda, is directed to decide the Regular Civil Suit No.06/2005 within a period of six months from today.

[PRAFULLA S. KHUBALKAR, J.]

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