



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 WRIT PETITION NO. 11985 OF 2022

BHAGWAT HARI PATIL
VERSUS
VIKRAM DAMODAR PATIL AND OTHERS

Mr. Rajendrraa Deshmukkh, Senior Advocate a/w Mr. Shriram V.
Deshmukh i/b Mr. Devang R. Deshmukh, Advocate for the Petitioner
Mr. A. J. Patil, Advocate for Respondent No.1

CORAM : R. M. JOSHI, J.

DATE : 23rd APRIL, 2025

PER COURT :-

1. This petition takes exception to order dated 20/04/2019 passed below Exhibit 14 in R.C.A. No. 23/2016 whereby the First Appellate Court rejected application filed by the original plaintiff under Order 6 Rule 17 of the Code of Civil Procedure (for short 'CPC') for amendment to the plaint.

2. The facts in this case which undisputed are narrated in brief as under:

(i) The petitioner filed suit being R.C.S. No. 113/2011 for seeking injunction against the defendant No.1. The relief sought by the plaintiff in the said suit is reproduced herein below:

“अ) प्रतिवादीने मौजे सावदा ता. रावेर येथील शेतजमिन गट नंबर ७४ व सावदा न.पा. हद्दीतील त्याचे क्षेत्र ० हे ८४ आर यापैकी वादीचे मालकीचे व वादीचे प्रत्यक्ष ताब्यातील ०.४० चे क्षेत्रफळ ही प्रतिवादी नं. १ यांनी ७/१२

उता-यावर बेकयदेशीर फसवणूक करून नाव लावून घेतले आहे. त्याचा गैरफायदा घेवून कोणत्याही खरेदीखताने विक्री करू नये अथवा गहाणखत, बक्षीसपत्र, मृत्युपत्र दानपत्र सौदे पावती किंवा कोणत्याही प्रकारचे हस्तांतर करू नये असा कायमस्वरूपी मनाई हुकूम प्रतिवादीविरुद्ध मिळावा.

ब) सदरील दाव्यात प्रतिवादी नं. २ ते ५ बाबत कोणत्याही प्रकारे वादीची तक्रार नाही. परंतु त्यांचे उता-यात नाव आहे म्हणून दाव्यात सामिल प्रतिवादी केले आहे. त्यांचेविरुद्ध काहीही मागणे नाही. ”

3. Defendant No.1 filed written statement on 06/02/2012 specifically denying the rights title and interest of the plaintiff in respect of the suit property. It is thereafter issues were framed. Parties led their evidence. The learned Trial Court after hearing both sides passed judgment dated 06/02/2016 dismissing the suit. Against this dismissal of the suit R.C.A. No. 23/2016 is filed by the plaintiff. Before the First Appellate Court application Exhibit 14 came to be filed for seeking amendment to the plaint for incorporating following reliefs:

“ब) अपेलंटला मुळ दाव्यात कलम ३अ व विनंती कलमात कलम ९अ-१ म्हणून वर नमुद मजकुर सामील व दुरुस्त करण्याची परवानगी असावी. ”

4. It is a contention of the plaintiff for seeking above relief that the mutation entry bearing No. 37630 is illegal and hence the same is sought to be declared not binding on the plaintiff. Similarly, plaintiff seeks prayer of declaration that he has a right title interest in the suit property.

5. This application was opposed by the defendant. Learned Trial

Court rejected the said application by passing order impugned.

6. Learned counsel for the petitioner submits that even though the amendment has been sought during the pendency of the first appeal, the same is not prohibited by law. It is his submission by relying upon the judgment of the Hon'ble Supreme Court in case of *Life Insurance Corporation of India Versus Sanjev Builders Private Limited and ANR, 2022 LiveLaw (SC) 729* that irrespective of the claim of the party barred by limitation, the amendment is required to be allowed. It is his submission that the petitioner herein is old aged person and that after it was realized while preparing the arguments in Regular Civil Appeal that the amendment to the plaint is necessary and hence, the application deserves to be allowed.

7. It is his submission that the Coordinate Bench of this Court has held that the party can be compensated that directing payment of cost instead of rejecting the amendment application. He placed reliance on the judgment in case of *Rashid Ali Vs. Avni Ventrueers and Others, 2022 DGLS (Bom.) 927*.

8. Learned counsel for the respondent/defendant supported the impugned order.

9. The facts as they appear from the record clearly indicate that the suit is filed in the year 2011. There is a reference to the mutation entry No. 37630 in the said suit. It is further averred in the plaint that this mutation entry had come to the notice of the plaintiff on 16/05/2011. Similarly, plaintiff had knowledge about the denial of the right title and interest in the suit property by defendant with filing of the written statement on 06/02/2012. In spite of the same no steps were taken by the plaintiff to cause amendment to the plaint before commencement of trial.

10. The proviso to Order 6 Rule 17 of CPC mandates to the party to satisfy the Court that there was a due diligence and instead of all efforts the amendment could not be carried out. Herein this case there is absolutely no explanation in this regard in the application Exhibit 14.

11. Apart from this it is material to note that the original suit is filed for simplicitor injunction. With the amendment the plaintiff wants to change the nature of the suit to make it as a suit for declaration and for setting aside the mutation entry. The nature of the suit therefore is going to be changed if the amendment is allowed, which is not permissible in law.

12. The Hon'ble Supreme Court in case of *Life Insurance*

Corporation of India Versus Sanjev Builders Private Limited and ANR,
(supra) had drawn the following conclusion.

"70. Our final conclusions may be summed up thus:

i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in

the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

*(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi & Ors.*, 2022 SCC OnLine Del 1897)*

13. Clause No. (c) above clearly indicates that the amendment should be allowed provided it does not raise a time bar claim. In the instant case the claim sought to be made by way of amendment is clearly time barred. This judgment therefore does not help the petitioner in any manner whatsoever to support his case. In so far as the judgment of the Coordinate Bench of this Court in case of ***Life Insurance Corporation of India Versus Sanjev Builders Private Limited and ANR*** (supra) in the facts of the said case it was justified that payment of appropriate cost could be directed for allowing the amendment application. Therein the amendment has not changed the nature of the suit as sought to be done herein.

14. In view of above discussion and as this Court finds no perversity in the impugned order, no interference is caused therein. Hence, petition stands dismissed.

15. At this stage learned counsel for the petitioner seeks continuation of the stay of suit. Considering the above observations and also in view of the fact that petitioner himself is aged about 90 years. Request stands refused.

(R. M. JOSHI, J.)

ssp