

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
**WRIT PETITION NO. 2843 OF 2016**

|                               |     |             |
|-------------------------------|-----|-------------|
| Sattappa Ramu Chougule        | ... | Petitioner  |
| Vs.                           |     |             |
| Maruti Bhairu Kokitkar & Ors. | ... | Respondents |

Mr. Chetan G. Patil, for the petitioner

Mr. Sandeep S. Koregave, for the respondent Nos. 1 to 3 and 5 to 11.

**CORAM: SMT. SADHANA S. JADHAV, J.**

**DATE : 9<sup>th</sup> October, 2017.**

**P.C.**

At the threshold, it is submitted that respondent No. 4 has expired and the name of the respondent No. 4 is deleted in the original suit and, therefore, it would not be necessary to bring the legal heirs on record in the present Petition.

2. Heard. Rule. Rule made returnable forthwith with consent of the parties.

3. The petitioner herein happens to be the plaintiff in Regular Civil Suit No. 125 of 2009. The subject suit is filed seeking the relief of perpetual injunction against the defendants. It is specifically contended in the plaint that the subject property in the suit is an agricultural land and that the plaintiff is paying revenue tax every year and that 7 x 12 extract also stands

in his name. It is further contended in the suit that in the year 1988, part of the subject suit property i.e. 57 Ares was sold in favour of Dattu Landge and his brother. It is further contended in the plaint that the plaintiff had learnt from the reliable sources that the original defendant i.e. defendant Nos. 1 to 11 had filed an application seeking mutation in their names. A notice was issued by the Circle Officer. It revealed that the respondent herein had filed an application containing therein that in the year 1974-75 he had purchased the land from Ramu Chaugule. At that stage also it was contended that after 34 years of the purported sale deed, the defendants had taken steps seeking mutation in their favour. According to the plaintiff, he was in possession of the suit property since his forefathers. The name of the original defendants i.e. the respondents herein was mutated in the year 2008-2009 in the revenue records. The plaintiff had prayed for perpetual injunction and had also filed an application under Order XXXIX rule 1 of C.P.C.

4. The said application was rejected by an order dated 26.11.2009. While rejecting the application Exhibit 5, the learned Judge had taken into consideration that the revenue records, more particularly 7 x 12 extracts and had observed that the original defendants were in possession since the date of mutation of their names in the said 7 x 12

extract. It is also contended that the defedants were also claiming possession for more than 30 years. It was the prima facie observation of the learned Judge that in fact there is no reason to grant injunction under Order XXXIX Rule 1 of C.P.C. since the defendants claimed possession on the basis of the title.

5. Being aggrieved by the order dated 26.11.2009, the plaintiff filed Misc. Civil Appeal. During the pendency of the appeal i.e. on 16.10.2014, the plaintiff filed an application seeking amendment to the original plaint along with the proposed amendment. According to the plaintiff, it was stated in the application that since the petitioner and his son were ill, and by taking benefit of the rejection of an order under Order XXXIX Rule 1, the respondents have taken possession of the suit property and therefore it was prayed that they are praying for recovery of possession of the suit property and in the body of the plaint, they desired to amend the plaint to the effect that the respondents have taken possession only after the order under Order XXXIX Rule 1 was passed against the plaintiff.

6. The learned Civil Judge, Junior Division, Kagal by an order dated 16.6.2015 has rejected the application along with the proposed amendment on the ground that it would change the very nature of the suit.

7. The learned counsel for the petitioner submits that since it is a

subsequent event which is proposed to be brought on record, it cannot be said that it would change the nature of the suit. It is true that in a suit seeking perpetual injunction, a contrary prayer is being made seeking recovery of possession on the basis of the subsequent event of taking possession from the pendency of the suit.

8. The learned counsel for the petitioner placed implicit reliance upon a Judgment of the Hon'ble Apex Court in the case of **Sampath Kumar vs. Ayyakannu & Anr. (2002) 7 SCC 559**. It is observed as follows :-

*“9. Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for*

*amendment.”*

9. The learned counsel for the respondents vehemently submits that in fact, the petitioner cannot pray for amendment to the suit as the amendment would relate back to the date of institution of the suit and that they are two contrary prayers. It is submitted that in a suit seeking perpetual injunction, the plaintiff cannot take a contrary stand and say that he has lost possession only during the pendency of the suit. However, this is only a change in circumstance. The said application seeking amendment ought to be filed before framing of issues. Then the respondents/original defendants would be at liberty to file written statement against the proposed amendment and pray that the amendment does not deserve to be incorporated and the issue to be decided at the final stage.

10. It is pertinent to note that the plaintiff/petitioner had not filed on record any medical certificate to demonstrate that when the petitioner was ill, the respondents have taken possession and therefore genuineness of the contention is doubtful.

11. The learned counsel for the respondents has vehemently submitted that in the proposed amendment, the plaintiff has made no efforts in respect of the details in regard to the date on which the respondents had taken possession or the manner in which the respondents

had dispossessed the plaintiff during the pendency of the suit. It is also submitted that only after realizing that the plaintiff has filed an application seeking amendment. However, it would be the discretion of the learned Civil Judge, Junior Division, Kagal to decide the matter on its own merits only after taking into consideration the written statement filed by the respondents. At this stage, the application seeking amendment deserves to be allowed. However, the proposed amendment shall not affect the merits of the suit and it will be open for the learned Civil Judge, Junior Division, Kagal to consider the same on its own merits. The respondents are at liberty to file written statement. The petition is allowed only to that extent. The application seeking amendment is allowed. However, the prayer for amendment deserves to be granted only after hearing the respondents as the respondents were heard at the time of rejection of the application seeking the proposed amendment and therefore the amendment deserves to be allowed only to avoid multiplicity of proceedings. Amendment to be carried out forthwith. The learned Civil Judge, J.D.,Kagal, shall take the additional written statement on record.

12. This Court has not gone into the merits of the suit and the same shall be decided on its own merits without being influenced by the observations made hereinabove.

13. The Petition is allowed. Rule is made absolute in the above terms.

**[SMT. SADHANA S.JADHAV, J.]**