

Alice D'Souza	...	Petitioner
Vs.		
Suresh Frederick Pinto (deleted)		
Smita Mohan Kocharekar and others	...	Respondents

Mr. Kunal Bhanage for Petitioner.
Mr. Anand Gandhi for Respondents No.1 to 7.

CORAM : R. G. KETKAR, J.
DATE : JUNE 4, 2018

P.C. :

Heard Mr. Bhanage, learned Counsel for the petitioner and Mr. Gandhi, learned Counsel for the respondents No.1 to 7 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.2', has challenged the judgment and order dated 25.01.2017 passed by the Appellate Bench of the Small Causes Court at Bombay in Revision Application No.159 of 2015. By that order, the Appellate Court allowed the Revision Application filed by respondents No.1 to 7 and quashed and set aside the judgment and order dated 03.03.2015 passed by the learned Judge, Court Room No.19 of the Court of Small Causes at Mumbai below exhibit-65. The Appellate Court allowed application exhibit-65 filed by the plaintiffs under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the plaint.

3. In support of this Petition, Mr. Bhanage submitted that plaintiffs have instituted T.E.Suit No.9/10 of 2008 against defendant No.2 and others inter alia contending that defendants are in possession of open plot of land bearing Final Plot No.639 admeasuring 1272 sq.yards of

Mahim Division situate at Sitladevi Temple Road, Mahim, Mumbai 400 016 (for short 'suit property'). As against this, defendant No.2 and others have specifically contended that they are the tenants in respect of the structures and not open plot of land and consequently, the Suit instituted by the plaintiffs as T.E.Suit is liable to be dismissed. He submitted that issues were framed. At that time, plaintiffs filed application exhibit-65 under Order VI, Rule 17 of C.P.C. In paragraph 3 of that application, plaintiffs asserted that they have been advised that in view of the specific contentions raised by the defendants, they should raise alternative plea of bonafide requirement of the plaintiffs under the Maharashtra Rent Control Act, 1999 (for short 'Act'). He submitted that the learned trial Judge rejected the application. As against this, the Appellate Court reversed that decision in Revision Application.

4. Mr. Bhanage invited my attention to the impugned order and in particular paragraphs 10 and 14. In paragraph 10, the Appellate Court observed that the nature of the Suit is not changed as also after amendment, the Suit as instituted, cannot be held to be not maintainable. In paragraph 14, the Appellate Court reiterated that the jurisdiction of the Small Causes Court will not be ousted by allowing the amendment and it would also not change the character of the plaint. He has also taken me through the schedule of amendment to contend that by the proposed amendment, nature of the Suit is changed and the Suit will no longer be maintainable.

5. On the other hand, Mr. Gandhi supported the impugned order. He has taken me through the copy of the plaint, as originally instituted, and the proposed amendment.

6. I have considered the rival submissions advanced by the learned

Counsel appearing for the parties. I have also perused the material on record. A perusal of the plaint, as originally instituted, and in particular paragraphs 6 and 12 clearly shows that plaintiffs have averred that they bonafidely need the suit property for erecting an edifice to perform charitable and benevolent activities to the poor people of the Society and to expand their medical aid to larger section of the Society. In paragraph 13, plaintiffs have averred that the suit property is an open plot of land and is exempt from the provisions of the Act. Plaintiffs have further averred in paragraph 23 that the Suit is between the lessor / landlord and the erstwhile tenant (defendants No.1 and 2) in respect of the suit property to which provisions of the Transfer of Property Act, 1882 apply and the Act does not apply as the open land is not covered under the said Act. The Small Causes Court has, therefore, jurisdiction to entertain and try and decide the Suit under Section 41 of the Presidency Small Causes Court Act, 1882.

7. Mr. Bhanage submitted that by the proposed amendment, the nature of the Suit is also changed and the Suit is not maintainable. With the assistance of the parties, I have perused the plaint and the proposed amendment. In paragraph 2 of the plaint, plaintiffs have asserted that one John Braz Pereira was a lessee of the open plot. John Braz Pereira expired leaving behind defendants No.1 and 2, namely, Thomas Pereira and Alice D'Souza as the legal heirs. In paragraph 5, it is further asserted that John Braz Pereira has constructed structure comprising of 28 tenements on the open plot of land leased to him. In the proposed amendment, plaintiffs have asserted that defendants No.1 and 2 have unlawfully sublet the same by constructing various structures on the open plot of land. In other words, plaintiffs have not admitted that defendants No.3 onwards are the tenants of open plot of land. In view thereof, I do not find any merit in the submission of Mr. Bhanage that

the nature of the Suit has changed. Plaintiffs have reiterated that defendants No.1 and 2 are the tenants of the open piece of land. In the original plaint also, plaintiffs have set up their bonafide requirement. In the case of *Abdul Rehman Vs. Mohd. Ruldu*, (2012) 11 SCC 341, the Apex Court has observed in paragraph 13 as under,

“13. Next, we have to see whether the proposed amendments would alter the claim/cause of action of the plaintiffs. In view of the same, we verified the averments in the unamended plaint. As rightly pointed out by Ms. Manmeet Arora, learned counsel for the appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the unamended plaint. **We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the unamended plaint and, therefore, the relief of cancellation of sale deeds as sought by the amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit.** In view of the same, the contrary view expressed by the trial court and the High Court cannot be sustained. It is not in dispute that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment on the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice should (sic would) have been caused to Respondents 13 (Defendants 13 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation.

(emphasis supplied)”

8. It is well settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change nature of the suit as noted earlier. Making clear and explicit what was already implicit in the plaint will not change the nature of the suit. All amendments which are necessary for the purpose of determining real questions in controversy between the parties should be allowed if it does not change basic nature of the suit. On facts, as noted

earlier, ground of bonafide requirement was implicit in factual matrix set out in unamended plaint and the proposed amendment does not change nature of the suit.

9. In view thereof, I do not find any merit in the submission of Mr. Bhanage. The Appellate Court has rightly allowed application exhibit-65. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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