

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2389 OF 2017

WITH

CIVIL APPLICATION (ST) NO. 17604 OF 2017

Vesta Building Products Pvt. Ltd.
A Company having its office at:
6, Nandanvan, Kalanagar, Bandra(E)
400 051, Through its Authorised
Signatory: Mr. Samir A. Pimpley

...Petitioner
(Ori. Plaintiff/
Appellant)

Versus

1. Balasaheb Kashinath Rasal
Age : Adult, Occupation : Agriculturist
2. Babaji Kashinath Rasal
Age : Adult, Occupation : Agriculturist
3. Smt. Saraswati Kashinath Rasal
Age : Adult, Occupation : Agriculturist
4. Ashok Haribhau Rasal
Age : Adult, Occupation : Agriculturist
5. Sopan Haribhau Rasal
Age : Adult, Occupation : Agriculturist
6. Smt. Tarabai Haribhau Rasal
Age : Adult, Occupation : Agriculturist
1 to 6 residing at:
Mouje Shivane, Tal. Maval, Dist.Pune
7. Smt. Shalan Babaji Sangle
Age : Adult, Occupation : Agriculturist
Residing at : Ghonseth, Tal. Maval,
Dist. Pune.
8. Smt. Leelawati Namdev Sangle
Age : Adult, Occupation : Agriculturist
Residing at : Bhogaon, Tal. Mulshi,
Dist. Pune
9. Anand Nathu Khadke
Age : Adult, Occupation : Agriculturist
10. Smt. Laxmibai Ashok Kadam
Age : Adult, Occupation : Agriculturist
9 and 10 Residing at: Ghonseth,
Tal. Maval, Dist. Pune.

11. Mr. Eknath Raghunath Gaikwad
(since deceased, through his heirs)
A] Mr. Amol Eknath Gaikwad
Age : 32 years, Occupation : Business
B] Akash Eknath Gaikwad
Age : 32 years, Occupation : Business
C] Mrs. Muktabai Eknath Gaikwad
Age : 50 years, Occupation : Business
A] to C] residing at: Tal. Karjat,
Dist. Raigad
12. Smt. Kamal Sopan Adhav
(since deceased, through her heirs)
Mrs. Aru Sopan Adhav
Age : 36 years, Occupation : Business
Residing at: Gahuja, Tal. Maval,
Dist. Pune
13. Smt. Kalawati Dattatray Gaikwad
Age : Adult, Occupation : Agriculturist
Residing at : Nashik
14. Smt. Dhaabai Waman Raikar
(since deceased, through her heirs)
A] Mr. Dada Waman Raikar
Age : 50 years, Occupation : Business
B] Mr. Rajendra Waman Raikar
Age : 38 years, Occupation : Business
Residing at: Alandi, Tal. Khed,
Dist. Pune.
C] Mrs. Sindhubai Suresh Kshirsagar
Age : 55 years, Occupation : Housewife
D] Mrs. Leela Lakshman Valunjkar
Age : 45 years, Occupation : Housewife
C] and D] residing at Wakad,
Tal. Mulshi, Dist. Pune.
E] Mrs. Meera Balasaheb Kshirsagar
Age : 40 years, Occupation : Housewife
Residing at: Kurvandi,
Taluka Ambegaon, District Pune.
15. Smt. Leelavatibai/Jijabai Namdeo Raut
Age : Adult, Occupation : Agriculturist
16. Smt. Latabai Vishnu Raut
Age : Adult, Occupation : Agriculturist
15 and 16 Residing at : Induri,
Tal. Maval, Dist. Pune.

17. Smt. Muktabai Eknath Gaikwad
Age : Adult, Occupation : Agriculturist
18. Smt. Rukmabai Rambhau Pawar
Age : Adult, Occupation : Agriculturist
17 and 18 Residing at: Karjat,
Dist.Raigad,
(Res. No.1,3,5 to 18 represented
through Power of Attorney Holders,
Res.Nos.2 and 4)

...Respondents
(Ori.Defendants
/Respondents)

Mr. Siddharth C. Wakankar, for the Petitioner.

Mr. G. S. Godbole, a/w Mr. Nilesh M. Wable, for Respondent
nos.1 to 5 & 12.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 16th JULY, 2019

PRONOUNCED ON : 28th AUGUST, 2019

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the Counsels for the parties, heard finally.

2. This petition under Article 227 of the Constitution of India takes exception to an order dated 10th October, 2016, passed by the learned District Judge-10, Pune, in Civil Appeal No.73 of 2016, on an application (Exhibit 22) under Order VI Rule 17 of the Code of Civil Procedure, 1973 ("the Code"), whereby the learned District Judge rejected the application for amendment of the plaint seeking to incorporate an alternative relief of a decree for specific performance of the contract to the extent of undivided interest of the executors of the agreement.

3. Shorn of unnecessary details the background facts, necessary for determination of the instant petition, can be stated as under:

(A) The petitioner – plaintiff had instituted a suit for a decree for specific performance of the contract to sell two parcels of land, Gat No.121 admeasuring 2H- 33Are and Gat No.114 admeasuring 1H- 43Are situated at village Shivane, Taluka Maval, District Pune (hereinafter referred to as “the suit lands”). The plaintiff averred that the respondents – defendant nos.1 to 6 had executed an agreement for sale of the suit lands in the nature of an earnest note (*visara pawati*) on 24th October, 2003, for a consideration of Rs.14,00,000/-. Defendant nos.1 to 6 had accepted an earnest amount of Rs.80,000/-, under the said agreement, which was executed before a Notary public. The defendants had delivered the possession of the suit lands to the plaintiff under the said agreement. The defendant nos.1 to 6 had agreed to obtain the permission of the Collector for the sale of the lands and also obtain the consent of the rest of the defendants (respondents – defendant nos.7 – 18) for the sale of the said land. The plaintiff further averred that the defendants did not obtain the permission of the Collector, as agreed, and execute the sale-deed of the suit lands in favour of the plaintiff,

despite repeated demands and legal notice. Hence, the suit for specific performance.

(B) The defendants resisted the claim. It was contended, *inter alia*, that the defendant nos.1 to 6 were not authorised by the other defendants – co-owners to execute the sale-deed in respect of the later's share in the suit lands and, thus, defendant nos.1 to 6 could not have professed to execute the agreement for sale of the suit lands in favour of the plaintiff.

(C) The learned Civil Judge, after appraisal of the evidence, was persuaded to dismiss the suit, by judgment and decree dated 1st January, 2014. The learned Civil Judge returned the finding that defendant nos.1 to 6 had executed the agreement for sale of the suit lands in favour of the plaintiff and had also agreed to obtain requisite permission from the Collector for the alienation of the suit lands. The learned Civil Judge was, however, persuaded to dismiss the claim for specific performance as it was found that the rest of the defendants had not authorised the defendant nos.1 to 6 to sell the suit lands and the said agreement for sale did not bind the rest of the defendants. The petitioner has assailed the said decree passed by the learned Trial Judge before the District Court, Pune, in Civil Appeal No.73 of 2016.

(D) In the said appeal, the plaintiff preferred an application for amendment of the plaint, under Order VI Rule 17 of the Code, so as to incorporate an alternate relief of decree for specific performance to the extent of the share of defendant nos.1 to 6, who had executed the agreement for sale, and the consequent relief of partition and separate possession, in that regard. The respondents – defendants resisted the application for amendment, *inter alia*, on the premise that the plaintiff has all along been aware of the fact that the rest of the defendants were neither signatories to the alleged agreement for sale nor they had authorised defendant nos.1 to 6 to sell their share in the suit lands and, thus, after the claim for specific performance was negatived by the trial Court, the plaintiff cannot be permitted to claim the said relief, which the plaintiff had consciously abandoned; that in view of the proviso to Rule 17 of Order VI of the Code, the Court cannot permit a party to amend the pleadings after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the matter before commencement of the trial. Since in the case at hand the trial had concluded, and there was no whisper about any due diligence on the part of the plaintiff, the application for amendment was untenable.

(E) The learned District Judge rejected the application for amendment principally on two grounds. First, the plaintiff has failed to ascribe any justifiable reason as to why the application for amendment was not filed before the commencement of the trial and, thus, the proviso to Rule 17 applied with full rigour, and as the trial itself was concluded, the amendment was impermissible at the appellate stage. Second, in the view of the learned District Judge, though the plaintiff endeavoured to amend the plaint so as to incorporate the relief of specific performance to the extent of the share of defendant nos.1 to 6, as an alternative relief, yet, it was, in fact, an additional relief and the same was barred by limitation.

4. Being aggrieved by and dissatisfied with the aforesaid impugned order, the plaintiff – petitioner has invoked the writ jurisdiction of this Court.

5. I have heard Mr. Wakankar, the learned Counsel for the petitioner and Mr. Godbole, the learned Counsel for respondent nos.1 to 5 & 12 at some length. With the assistance of the learned Counsels for the parties, I have also perused the material on record.

6. Mr. Wakankar submitted that the learned District Judge totally misconstrued the nature of the proposed amendment.

The learned District Judge committed a manifest error in examining the permissibility of the proposed amendment on the touchstone of the proviso to Rule 17 of Order VI only: ignoring the provisions of Section 22 of the Specific Relief Act, 1963 (“the Act, 1963”, for short), which enacts a special rule of pleading. It was further submitted that the learned District Judge also failed to appreciate the true nature of the proposed amendment as the plaintiff sought the relief of specific performance limited to the extent of the ownership of the executors to the agreement for sale, by way of an alternate relief, without prejudice to the main relief of specific performance of contract for the sale of entire suit lands. Thus, according to the learned Counsel for the petitioner, the impugned order is unsustainable in law and on facts.

7. In contrast to this, the learned Counsel for the respondents supported the impugned order. It was urged that in the backdrop of the amendment brought about by the Code of Civil Procedure (Amendment) Act, 2002, in Rule 17 of Order VI, the learned District Judge was wholly justified in refusing to permit the amendment of the plaint as the trial had not only commenced but concluded, with the dismissal of the suit. Moreover, there was no pleading of due diligence, much less, in

support thereof. Drawing the attention of the Court to the written statements filed by the defendants, wherein the objection as to the competence of defendant nos.1 to 6 to execute the agreement for sale on behalf of the other co-owners was raised, at the earliest possible opportunity, it was submitted that the plaintiff was fully aware of the incompetence of defendant nos.1 to 6 to alienate the share of the other co-owners and, yet, the plaintiff consciously pursued the said claim. It was further urged that since the plaintiff claims to be in possession of the suit lands, a bare prayer for delivery of possession, in the alternative, without there being any pleading in support thereof, cannot be sustained.

8. Indisputably, defendant nos.1 to 6 have executed the agreement for sale of the suit lands. There is no qualm over the fact that defendant nos.1 to 6 are not the full owners of the suit lands and there are other co-owners, including some of the defendant nos.7 to 18. The controversy before the learned trial Court was about the competence of defendant nos.1 to 6 to execute the agreement for sale in respect of the share of the rest of the co-owners. It was, in terms, found that the rest of the co-owners had neither authorised defendant nos.1 to 6 to execute

the agreement for sale nor gave consent for alienation of their share in the suit lands.

9. In this backdrop, two questions arise for consideration:

- 1) Whether a decree for specific performance of the contract for sale to the extent of the share of the contracting party can be passed when the other co-owner has not concurred in the sale?
- 2) Whether an amendment seeking such relief of decree for specific performance to the extent of the share of the contracting party can be permitted at the appellate stage?

10. As regards the first question, on first principles, it seems that to the extent the interest such contracting party has in the subject property, the contract for sale can be said to be a complete contract. In such a situation, can a party to the contract, who had professed to alienate the property, in which he has a definite or undivided interest, be permitted to resile from the contract on the ground that the other co-owner is not ready to join in the execution of the sale-deed. There does not seem to be any legal justification to take a view which would have the effect of absolving such party from the contractual liability even in respect of his share in the property, on the

premise that the other co-owner is not ready and willing to join in the alienation.

11. A reference, in this context, can be made to a judgment of the Supreme Court in the case of ***Kartar Singh vs. Harjinder Singh and others***¹, wherein the brother had agreed to sell not only his entire share in the property but also that of his sister and had undertaken that he would be responsible for getting the sale-deed executed from his sister. In a suit for specific performance, the trial Court had held that the brother was liable to sell his half share in the suit property and passed decree to that extent. On appeal, the High Court negatived the said finding on the premise that since the case was not covered by any of the exceptions to Section 12 of the Act, 1963, the brother could not have been directed to sell his share of the property. The Supreme Court allowed the appeal and maintained the decree passed by the trial Court. The Supreme Court observed, *inter alia*, as under:

“4.When the property is owned jointly, unless it is shown to the contrary, it has to be held that each one of the joint owners owns a moiety of the property. In the present case, there is neither a pleading nor a contention that the respondent and his sister did now own the property in equal shares. Secondly, the agreement of sale clearly mentions that respondent was entering into the agreement both on behalf of himself and his sister, and that he was, under the agreement, selling the whole of his share and also the whole of the share

1 (1993) Supreme Court Cases 517

of his sister in the property. Further in the agreement itself he had stated that he was responsible to get the sale deed executed by his sister and that he would persuade her to do so. This being the case, the properties agreed to be sold were clearly distinguishable by the shares of the respective vendors. In the circumstances when the absentee vendor, for some reason or the other, refused to accept the agreement, there is no reason why the agreement should not be enforced against the vendor who had signed it and whose property is identifiable by his specific share.

5. We are, therefore, of the view that this is not a case which is covered by Section 12 of the Act. It is clear from Section 12 that it relates to the specific performance of a part of a contract. The present is not a case of the performance of a part of the contract but of the whole of the contract so far as the contracting party, namely, the respondent is concerned. Under the agreement, he had contracted to sell whole of his property. The two contracts, viz. for the sale of his share and of his sister's share were separate and were severable from each other although they were incorporated in one agreement. In fact, there was no contract between the appellant and the respondent's sister and the only valid contract was with respondent in respect of his share in the property."

(emphasis supplied)

12. A profitable reference can also be made to another judgment of the Supreme Court in the case of **Sardar Singh vs. Krishna Devi (Smt.) and another**,² wherein the deceased brother of the appellant before the Supreme Court had entered into a contract for sale of the entire property with the respondent therein, though by an award, which was made rule of the Court under Section 17 of the Arbitration Act, 1940, it was declared that the appellant and his deceased brother were the owners of the property in question in equal share. After negating the challenge to the claim of the appellant therein on

the ground that the award passed by the Arbitrator was not registered under Section 17 of the Arbitration Act and, therefore, inadmissible in evidence to affect the property therein, the Supreme Court allowed the appeal and confirmed the decree for specific performance only to the extent of the share of the brother of the appellant. The observations of the Supreme Court in paragraph 17 make the legal position explicitly clear. They read as under:

“17. In view of the finding that the appellant had half share in the property contracted to be sold by Kartar Lal, his brother, the agreement of sale does not bind the appellant. The decree for specific performance as against Kartar Lal became final. Admittedly the respondent and her husband are neighbours. The appellant and his brother being coparceners or co-owners and the appellant after getting the tenant ejected both the brothers started living in the house. As a prudent purchaser Joginder Nath ought to have made enquiries whether Kartar Lal had exclusive title to the property. Evidence of mutation of names in the Municipal Register establishes that the property was mutated in the joint names of the appellant and Kartar Lal and was in joint possession and enjoyment. The courts below, therefore, have committed manifest error of law in exercising their discretion directing specific performance of the contract for the entire property. The house being divisible and the appellant being not a consenting party to the contract, equity and justice demand partial enforcement of the contract, instead of refusing specific performance in its entirety, which would meet the ends of justice. Accordingly we hold that Joginder Nath having contracted to purchase the property, it must be referable only in respect of half the right, title and interest held by Kartar Lal, his vendor. The first respondent being successor-in-interest, becomes entitled to the enforcement of the contract of the half share by specific performance. The decree of the trial court is confirmed only to the extent of half share in the aforestated property. The appeal is accordingly allowed and the decree of the High Court is set aside and that of the trial court is modified to the above extent. The parties are directed to bear their own costs throughout.”

13. It would be contextually relevant to note that a three Judge Bench of the Supreme Court in the case of **Surinder Singh vs. Kapoor Singh (dead) through LRs and others**³ had an occasion to examine the correctness of the view in **Kartar Singh** (supra), in the backdrop of the perceived conflict noted in the decisions in **Kartar Singh** (supra) and **Rachakonda Narayana vs. Ponthala Parvathamma**.⁴ In the said case also, the appellant – brother had professed to sell the land in which he had a share along with his sister. A plea was raised that the appellant was not authorised to enter into an agreement for sale on behalf of his sister. The trial Court had dismissed the suit accepting the said plea. The Division Bench of the High Court had allowed the appeal and passed a decree for specific performance in respect of the share of the appellant in view of the judgment in the case of **Kartar Singh** (supra). The Supreme Court explained the import of the judgment in the case of **Kartar Singh** (supra) as under:

“**12.** *Kartar Singh* was rendered in the fact situation obtaining therein. The observations therein to the effect that the provision of Section 12 was not applicable came to be made in view of the finding that the sister of the respondent had not entered into any contract at all. In this case, however, the appellant herein had entered into the

3 (2005) 5 SCC 142.

4 (2001) 8 SCC 173.

aforementioned agreement for sale on the premise that he had the requisite authority to do so on behalf of his sister as also on his own behalf. The sister of the appellant denied or disputed such authority and in that view of the matter, it is beyond any pale of doubt that the agreement for sale was entered into in respect of the entire suit land and having regard to the fact that the sister of the appellant did not authorise him to enter into the said agreement, sub-section (3) of Section 12 of the Act would clearly be attracted. *Kartar Singh* should not be held to lay down a law to the effect that even in a case where a part of the contract is held to be invalid, Section 12 will have no application.”

14. It is pertinent to note that in the said case, the Supreme Court had entertained an application for amendment of the plaint, after the matter was referred to the Larger Bench, in the backdrop of the conflict between the judgments in the case of ***Kartar Singh*** and ***Rachakonda*** (supra) and allowed the application for amendment holding that such an application can be filed at any stage of the proceedings and even before the Supreme Court.

15. In view of the aforesaid legal position, reverting to the facts of the case, it becomes evident that so far as the share of defendant nos.1 to 6 in the suit lands, the agreement for sale, can be stated to be a complete contract qua defendant nos.1 to 6. Indisputably, the execution of the agreement for sale by defendant nos.1 to 6 is not put in contest. In this backdrop, the plaintiff cannot be precluded from seeking the specific performance of the contract to the extent of the share of

defendant nos.1 to 6, by way of an alternative relief. Whether in the circumstances of the case, the plaintiff is entitled to such a relief is an altogether different aspect which needs to be adjudicated by the Court. The aspect of the applicability or otherwise of the provisions contained in Section 12 of the Act, 1963 also warrants examination by the Court. However, the incorporation of such a plea in the plaint can hardly be questioned.

16. This propels made to the second question about justifiability of such an amendment at an appellate stage. From a fair reading of the impugned judgment, it becomes evident that the learned District Judge, did not advert to the provisions contained in Section 22 of the Act, 1963. The tenability of the application was considered only through the prism of the provisions contained in Order VI Rule 17 of the Code, especially the proviso thereto. Whether this approach is justifiable?

17. Undoubtedly, the proviso to Rule 17 of Order VI contains an interdict against permitting amendment in the pleadings after the commencement of the trial, unless a party makes out a case that despite due diligence it could not seek such an amendment before the commencement of trial. However, the said prescription cannot be considered in isolation. The rule of

pleading envisaged in a statute governing a particular jurisdiction, needs to be accorded due weight. Section 22 of the Act, 1963 enacts such a rule of pleading. Section 22 of the Act, 1963 reads as under:

“S.22. Power to grant relief for possession, partition, refund of earnest money, etc.—

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or [made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.”

18. Evidently, in order to avoid multiplicity of proceedings, the legislature, in its wisdom, had provided that the plaintiff may claim a decree for possession, partition and separate possession, in addition to specific performance and further provided that the plaintiff be allowed to claim such relief, at any stage of the proceedings. It is imperative to note that Sub-section (1) of Section 22 gives an overriding effect to the said

Section by incorporating a non-obstante clause as against the provisions contained in the Code. Moreover, the words, “in an appropriate case” and “at any stage of the proceeding” are of material significance and further expand the scope and ambit of the provisions contained in Section 22. The words, “in an appropriate case” indicate that it is not obligatory for the plaintiff to seek such relief in every case. The relief envisaged by Clauses (a) and (b) of Sub-section (1) can be sought and granted provided the case is susceptible of or conducive to grant of such relief. Whereas the words, “at any stage of the proceeding” underscore the fact that the stage of the proceeding does not matter and if a case is made out for seeking those reliefs, stage of the proceedings would not be a hindrance. The expansive nature of this provision stems from the principle that the equitable relief of specific performance to be complete and effective ought to encompass in its fold all that which a party had agreed to perform.

19. Since the learned District Judge had declined to permit the plaintiff to amend the plaint in view of the bar contained in the proviso to Rule 17 of Order VI, it would be advantageous to make a reference to a judgment of this Court in the case of ***Lalchand Sheetalsing Pardeshi died through heirs and***

LRs vs. Ramkrishna Kashinath Jadhav & others,⁵ wherein a learned Single Judge had considered the effect of the amended provision on an application for amendment falling under the provisions of Section 22 of the Act, 1963. After referring to the provisions contained in Section 22 and Order VI Rule 17 of the Code and the apparent conflict therein, it was observed as under:

“8.Section 22(1) has an overriding effect over the provisions contained in Civil Procedure Code. Section 22 is also a law dealing with pleadings, as is the case in relation to Order VI, Rule 17 of Civil Procedure Code. Section 22 deals with pleadings in regard to specific type of cases and, as such, the said statute viz. Specific Relief Act is a special statute, in contradistinction to the provisions in the Code of Civil Procedure which are general in nature. Provision in a special statute which has been given an overriding effect by introducing a *non-obstante* clause has to prevail over the provisions contained in the Code of Civil Procedure and, in this view of the matter, the submission canvassed on behalf of the petitioners, that Section 22 overrides the provisions contained in the proviso to Rule 17 of Order VI of Civil Procedure Code, has to be accepted.

9. Once it is held that Section 22 of the Specific Relief Act has an overriding effect over the provisions contained in Order VI, Rule 17, then it is amply clear that the plaintiff has a right to seek amendment claiming possession, in a suit for specific performance of contract, for the transfer of immovable property and the Court has no option and/or choice but to allow the said amendment. The proviso to Sub-section (1) of Section 22 of the Specific Relief Act enables the plaintiff who has not claimed the relief of possession in the plaint, to seek an amendment and claim the same at any stage of the proceedings and the said right of the plaintiff cast an obligation on the Court to allow the said amendment. The relevant words used in the proviso "the Court shall", clinches the issue. The word "shall" used in the proviso is mandatory.”

20. A profitable reference can also be made to the judgment of the Supreme Court in the case of ***Babu Lal vs. Hazari Lal Kishori Lal and others***,⁶ wherein the true import of provision contained in Section 22 of the Act, 1963, was expounded by the Supreme Court. It was, *inter alia*, observed that the proviso to sub-section (2) of Section 22 provided for amendment of the plaint on such terms as may be just for including a claim for such relief "at any stage of the proceeding". The term "proceedings" is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. The word "proceeding" in Section 22 includes execution proceedings also. It is a term giving the widest freedom to a court of law so that it may do justice to the parties in the case. Execution is a stage in the legal proceedings. It is a step in the judicial process. It is thus clear that the legislature has given ample power to the Court to allow the amendment to the plaint at any stage, including the execution proceedings.

6 1982 (1) SCC 525.

21. In view of the aforesaid pronouncements, it becomes abundantly clear that neither the bar under proviso to Rule 17 of Order VI nor the stage of the proceedings precludes a Court from permitting a person claiming the relief of specific performance from seeking amendment so as to incorporate the reliefs enumerated in Section 22 of the Act, 1963. From this standpoint, the fact that the plaintiff did not seek to amend the plaint before the commencement of the trial or for that matter filed the application for amendment of the plaint before the appellate Court, does not disentitle him from seeking an amendment to incorporate such relief.

22. The conspectus of the aforesaid consideration is that the plaintiff could have been legitimately permitted to amend the plaint so as to seek the relief of specific performance of the contract to the extent of the share of defendant nos.1 to 6 and a further consequential relief of partition and separate possession of the suit lands to the extent of the share of defendant nos.1 to 6, in the alternative. The impugned order, therefore, deserves to be quashed and set aside. The application preferred by the petitioner – plaintiff for amendment of the plaint (Exhibit 22 in Civil Appeal No.73 of 2016) deserves to be allowed. It goes without saying that the respondents – defendants would be

entitled to file written statement and raise all the defences, as permissible in law.

23. For the foregoing reasons, the petition deserves to be allowed. Hence, I pass the following order.

: Order :

- (i) The petition stands allowed.
- (ii) The impugned order passed by the learned District Judge stands quashed and set aside.
- (iii) The application for amendment under Exhibit 22 stands allowed.
- (iv) The petitioner – plaintiff shall carry out the necessary amendment within four weeks from the date of this order.
- (v) Rule made absolute in aforesaid terms.

24. In view of disposal of the petition, the civil application does not survive and stands disposed of accordingly.

25. All concerned to act on an authenticated copy of this order.

[N. J. Jamadar, J.]