

DDR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6732 OF 2016

Navnath Changdev Tanpure

..Petitioner

vs.

Runjhaba Daval Mehtar (Khairnar)
(since deceased) through his legal heirs
1(a) Sundarabai Runjhaba Mehtar/Khairnar
& ors.

..Respondents

....

Shri S.S. Kulkarni for petitioner.

Shri Pravartak Pathak for respondent Nos. 1A to 1E.

....

CORAM : M.S.KARNIK, J.

DATE : 26th AUGUST, 2019

P.C. :

Heard learned counsel for the petitioner.

2. The challenge in this Petition is to an order dated 23rd February, 2016 passed by the trial Court rejecting the application for amendment made below Exhibit 26.

3. The petitioner is the original plaintiff. The plaintiff has filed a suit for injunction restraining the defendants from interfering with or causing any obstruction to the plaintiff's

possession of the suit property. The plaintiff specifically stated in the Plaint that it is the plaintiff who is in possession and it is on this basis the injunction is sought. The said suit was filed by the plaintiff sometime in April, 2011.

4. Prior to filing of the present plaintiff's suit the present defendant had filed Special Civil Suit No.47/2011. The said suit was for a declaration that the sale deed dated 23rd March, 2010 executed by defendant Nos. 1 to 4 in favour of defendant No.7 (the plaintiff in the present suit) to be declared as not binding on the present plaintiff's share. In the said suit, the present plaintiff was held not to be in possession. The present plaintiff filed an Appeal which came to be rejected.

5. Now by virtue of the amendment, the plaintiff has sought a relief of recovery of possession. The suit initially filed was for injunction on the basis that it is the plaintiff who is in possession.

6. The trial Court has observed that consequent upon the orders passed by the Courts in the course of Special Civil

Suit No. 47/2011, that in the present suit filed in the year 2011 an application is moved in 2016 for amendment which would change the nature of the suit.

7. Considering the fact that it is only after the trial Court as well as Appellate Court in Special Civil Suit No. 47/2011 were of the view that the plaintiff is not in possession that the present application for amendment is filed. The Apex Court in the case of **M/s. Revajeetu Builders and Developers vs. M/s. Narayanaswamy and Sons and Ors.** reported in **AIR 2009 SC (Supp) 2897**, following observations in paragraphs 67, 68, 69 and 70 which are quoted below :

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether the application for amend-ment is bona fide or mala fide?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit malafide, worthless and/or dishonest amendments.”

8. Considering the conduct of the plaintiff in awaiting the decisions of the Trial Court as well as Appellate Court in Special Civil Suit No. 47/2011 holding that the plaintiff is not in possession, in view of this, in my opinion this is not a fit case to allow amendment though the application is made before framing of issues. Since 2011 it has been the consistent stand of the plaintiff that he is not in possession. In these facts if the Trial Court has refused to entertain the application for amendment considering the conduct of the plaintiff, I do not see any infirmity in the approach of the Trial Court as now the plaintiff wants to seek recovery of possession by way of amendment. No interference with the order passed by the trial Court is warranted. The Petition is rejected.

(M.S.KARNIK, J.)