

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4477 OF 2018

Ananda Maruti Naik & ors. ...Petitioners

Versus

Mahipati Dattu Naik & ors. ...Respondents

Ms. S. A. Naik, I/b Padmanabh D. Pise, for the Petitioners.

CORAM: N. J. JAMADAR, J.

DATED: 12th JULY, 2019

Oral Order :-

1. Heard Ms. Naik, the learned Counsel for the Petitioners.
2. By this petition under Article 227 of the Constitution of India, the Petitioners take exception to an order passed by the learned 2nd Joint Civil Judge, Junior Division, Peth-Vadgaon, on 28th September, 2017, whereby an application preferred by Respondent nos.1 to 5, original plaintiffs, for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908, came to be allowed.
3. Respondent nos.1 to 5 (original plaintiffs), have instituted a suit against the Petitioners (original defendant nos.2 and 3) and Parubai Khandu Madane (original defendant no.1) for declaration that the plaintiffs had a

preferential right to purchase the suit house. During the pendency of the suit, defendant no.3 had purchased the suit property from defendant no.2 in pursuance of a Sale Deed executed on 28th January, 2015. The plaintiffs – Respondent nos.1 to 5, thus, filed an application seeking amendment so as to incorporate the said fact of alienation of the suit property and the challenge to its validity as well. The Petitioners – original defendant nos.2 and 3 resisted the prayer on the count that the plaintiffs were well aware of the transactions between defendant nos.2 and 3 and yet did not seek amendment of the plaint well in time, and preferred the application belatedly.

4. The learned Civil Judge was persuaded to allow the application holding, *inter alia*, that the proposed amendment is necessary to decide the real question in controversy between the parties and also to avoid multiplicity of the proceedings. The inconvenience caused to the defendants, especially on account of delay in seeking the amendment, was sought to be addressed by imposing costs upon the plaintiffs. Being aggrieved, the Petitioners have invoked the writ jurisdiction of this Court.

5. The learned Counsel for the Petitioners urged that the amendment would change the nature of the suit. Moreover, there was an inordinate delay in seeking the amendment. In the circumstances, the learned Civil Judge could not have exercised the discretion to allow the application for amendment.

6. I find it difficult to accede to the submission on behalf of the Petitioners. Indisputably, during the pendency of the suit, the suit property has changed hands. The Court has to take appropriate cognizance of the subsequent events, at least to mould the relief which may be ultimately granted. The amendment so as to incorporate the challenge to the validity of the said transaction between defendant nos.2 and 3 is necessary for determining the real question in controversy between the parties and also to prevent the multiplicity of the proceedings. Moreover, the learned Trial Judge, has addressed the issue of prejudice likely to be caused to the defendants by imposing costs. It is trite law that all amendments which are necessary for determining the real question in controversy between the parties can be permitted provided no such prejudice is caused to the other

side, which cannot be compensated by way of costs. In the facts of the case, the learned Civil Judge has justifiably exercised the discretion to allow the amendment. No interference is thus warranted in the impugned order in exercise of extra-ordinary jurisdiction under Article 227 of the Constitution of India.

7. Hence, the petition stands dismissed.

[N. J. JAMADAR, J.]