

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.2144 of 2018

Prakash Rahate Vs. Ramkrushna Mendhe (D) Through LRs & Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Abhishek Shukla h/f Mr.S.G. Shukla, Advocate for petitioner
Mr. D.C. Chahande, Advocate for respondent No.1.

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 13, 2019

By this writ petition, the petitioner (original plaintiff), has challenged order dated 20th January 2018, passed by the Court of 2nd Jt. Civil Judge (Jr. Dn.), Kampthee (Trial Court), in Regular Civil Suit No.41/2010, whereby an application for amendment filed on behalf of the petitioner stood rejected.

2. The suit was originally filed in the year 1991 bearing R.C.S. No.2017/1991 (Now renumbered as 14/2010). The suit has been filed for declaration, permanent injunction and cancellation of correction deed. It is the case of the petitioner that he and the defendant No.1, both purchased lands from original defendant No.2 in the year 1986. It was claimed that thereafter in the year 1987, a correction deed was caused to be executed, whereby land which was purchased by the petitioner was illegally shown as

belonging to the respondent No.1. This resulted in the petitioner approaching the Trial Court seeking the aforesaid reliefs.

3. It was in this suit that an application for amendment was moved on behalf of the petitioner on 19/08/2017, seeking to place on record the source of title of the original defendant No.2, as being through his grand-father. The pleadings sought to be added by way of amendment pertained to lands purchased by the petitioner as well as respondent No.1. In this proposed amendment of pleadings, reference was made to certain document which was the source of title of grand-father of original defendant No.2 from whom the defendant No.2 obtained the title to the said properties.

4. The said amendment was opposed on behalf of respondent No.1, inter alia, on the ground that even as per the petitioner, he became aware of the said document in the year 2004 and, therefore, amendment application moved in the year 2017, demonstrated that due diligence was not demonstrated. On this basis, it was claimed that amendment application deserved to be rejected by applying the proviso to of Order 6 Rule 17 of the Code of Civil Procedure.

5. By the impugned order, the Trial Court rejected the application for amendment primarily on

the ground that the petitioner had failed to show due diligence because he was admittedly aware of the said document way back in the year 2004 itself.

6. The learned counsel for the petitioner submits that the approach adopted by the Trial Court was erroneous because the proviso to Order 6 Rule 17 of the Code of Civil Procedure, which was introduced by way of amendment in 2002, would not apply to the suit filed by the petitioner as it was filed in the year 1991. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of **State Bank of Hyderabad Vs. Town Municipal Council (2007) 1 SCC 765**. It was further submitted that even if the aforesaid proviso introduced by way of amendment under Order 6 Rule 17 of the Civil Procedure Code was found applicable, the Hon'ble Supreme Court had held that an approach was required to be adopted by the Courts to meet the ends of justice and this was specifically laid down by the Hon'ble Supreme Court in the case of **Revajeetu Builders and Developers Vs. Narayanaswamy and Sons, (2009) 10 SCC 84**, followed in subsequent judgment in the case of **Chakreshwari Construction Pvt. Ltd. Vs. Manohar Lal 2017(5) Mh.L.J. 195**.

7. On the other hand, the learned counsel appearing for respondent No.1 submitted that the Trial Court was justified in passing the impugned order because admittedly the petitioner was aware about the

said document in the year 2004 itself and that he had failed to show due diligence. It was also pointed out in the reply opposing the application filed by the petitioner that evidence was closed on behalf of the petitioner and there were series of applications filed by the petitioner only with an intention to delay the proceedings before the Trial Court.

8. Heard learned counsel for rival parties, perused the material on record and the judgments relied upon by the learned counsel for the petitioner. In the case of **State Bank of Hyderabad Vs. Town Municipal Council** (supra), the Hon'ble Supreme Court held that, in the facts of that case, where the suit was filed in the year 1998, proviso to Order 6 Rule 17 of the Civil Procedure Code would not apply, as it was introduced by way of amendment of the Civil Procedure Code in the year 2002. In the present case, the suit was filed in the year 1991 and, therefore, by applying the said position of law, it would be evident that proviso to Order 6 Rule 17 of the Civil Procedure Code, introduced by way of amendment in the Civil Procedure Code in the year 2002, would not apply.

9. A perusal of the impugned order passed by the Trial Court shows that the only basis for rejecting the said application of the petitioner was that he failed to show due diligence and, therefore, fell foul of the said proviso to Order 6 Rule 17 of the Civil Procedure

Code. The above mentioned position of law takes away the very basis of the impugned order passed by the Trial Court and, therefore, it is found to be erroneous.

10. Yet, to satisfy the conscience of this Court, assuming that the proviso would apply this Court has examined the application for amendment filed on behalf of the petitioner on the touch stone of law laid down by the Hon'ble Supreme Court. The position of law has been reiterated in the case of **Chakreshwari Construction Pvt. Ltd. Vs. Manohar Lal** (supra), wherein the Hon'ble Supreme Court relied upon earlier judgment in the case of **Revajeetu Builders and Developers Vs. Narayanaswamy and Sons** (supra). In the said judgment of the Hon'ble Supreme Court in the case of **Revajeetu Builders and Developers Vs. Narayanaswamy and Sons** (supra), in the context of deciding application for amendment, following position of law was laid down.

“63. On critically analysing 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 amendment 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.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6, Rule 17. These are only illustrative and not exhaustive.”

11. As noted above, the said position of law had been followed in subsequent judgment in the case of **Chakreshwari Construction Pvt. Ltd. Vs. Manohar Lal** (supra).

12. Applying the said parameters to the proposed amendment that was moved on behalf of the petitioner it becomes evident that the amendment deserved to be allowed because it does not in any manner fundamentally change the nature or character of the case and in fact the amendment sought to be brought on record would assist the Trial Court to decide the real controversy between the parties. The learned counsel for the petitioner is justified in inviting attention of this Court to the fact that respondent No.1 has not denied the fact that the original defendant No.2 is the person from whom both the petitioner and respondent No.1 claimed to have purchased the lands

in question. The pleadings pertaining to the source of title of the original defendant No.2 would in fact assist the Trial Court in deciding the controversy between the parties.

13. In view of above, it is found that impugned order passed by the Trial Court is not sustainable and accordingly, the impugned order is set aside and the application filed by the petitioner (Exh.200), is allowed in terms of prayer made therein.

14. Consequently, amendment be carried out before the Trial Court by the petitioner within a period of four weeks from today.

15. It is claimed on behalf of the petitioner that the documents that are stated to be lease deeds in the aforesaid proposed amendment are in fact deeds of sale. This Court cannot go into the said controversy in the present writ petition, but, opportunity is granted to the petitioner, in the interest of justice, to move appropriate application before the Trial Court in that regard.

15. Writ petition is disposed of in above terms.

JUDGE