

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (ST.) NO.11700 OF 2020
IN
WRIT PETITION NO. 2412 OF 2005

Ramchandra Dadaram Bhakt
(since deceased, through L.Rs.)
Smt. Sulochana Ramchandra Bhakt and others ...Applicants

Versus

Pandurang Jagannath Agrawal
(since deceased through L.Rs.)
Smt. Durgadevi Pandurang Agrawal and others ...Respondents

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Advocate for Applicants : Ms. P.S. Talekar i/b M/s. Talekar and
Associates
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CORAM : V. K. JADHAV, J.
DATED : 21st JULY, 2020

PER COURT:-

1. Heard.
2. The applicants are seeking review of the judgment and order dated 20.02.2020 passed by this court in writ petition No. 2412 of 2005.
3. Brief facts giving rise to the review application are as follows:-
 - (a) The applicants-original plaintiffs have instituted Special Civil Suit No. 70 of 1990 for specific performance of contract and recovery

of possession against the respondents before the Civil Judge, Senior Division, Jalna. During pendency of the said suit, the applicants plaintiffs had filed an application Exh. 145 on 1.9.1999 seeking amendment by referring the document dated 11.4.1996 and the said application since allowed by the trial court, the plaint came to be amended by incorporating para 8-A. The applicants-original plaintiffs on 28.10.2004 filed an application Exh.211 under Order VI Rule 17 of C.P.C. seeking amendment in the plaint. The respondents herein original defendants had strongly resisted the said application by filing their say at Exh.213. The learned Civil Judge, Senior Division, Jalna by order dated 18.01.2005 allowed application Exh.211 and permitted the applicants-plaintiffs to carry out the proposed amendment.

(b) Being aggrieved by the same, the respondents-defendants had preferred writ petition No. 2412 of 2005 in this court. By order dated 20.2.2020 this Court has allowed the writ petition and quashed and set aside the impugned order dated 18.01.2005 passed by the Civil Judge, Senior Division, Jalna below Exh.211 and rejected the application Exh.211. This Court has further directed the trial court to dispose of the Special Civil Suit No. 70 of 1990, as expeditiously as possible, however, preferably within a period of one year from the date of order. The applicants-original plaintiffs are seeking review of the judgment and order dated 20.2.2020 on various grounds.

4. Learned counsel for the applicants original plaintiffs submits that there is prima facie error in the order dated 20.2.2020 passed by this court in writ petition No. 2412 of 2005 and the duty on the Constitutional courts to correct its error so as to prevent injustice. Learned counsel has placed reliance on the judgment of Supreme Court in the case of **M. M. Thomas vs. State of Kerala, reported in 2000 (1) SCC 666**. Learned counsel submits that this court has erroneously held that the proposed amendment will go to the root of the case and also change the nature of the suit. Learned counsel submits that the purpose and object of Order VI Rule 17 of C.P.C. is to allow either party to alter or amend his pleading in such a manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice.

5. Learned counsel for the applicants-original plaintiffs submits that the proposed amendment does not cause any injustice or prejudice to the respondents-defendants since the document dated 11.4.1996 is already placed on record and only certain things by way of clarification in pursuance of the said document remained to be explained. Learned counsel submits that in the case of **Atul Medical, Pune vs. M/s. Cadila health Care Pvt. Ltd. reported in (2005) 4 Mh.L.J. 925** this Court has held that introduction of a new case is no ground for refusal of amendment so long as the defendant has an opportunity to defend the new case. Learned counsel submits that

this court has erroneously held that after a gap of eight years, application Exh.211 came to be filed introducing for the first time the story of delivery of possession of some of the suit property in terms of document dated 11.4.1996. Learned counsel submits that the court should not go into the merits of proposed amendment and it is for the trial court to consider the issue on merits while deciding the suit. Learned counsel submits that the Apex Court in the case of ***Rajesh Kumar Aggarwal and others vs. K.K. Modi and others, reported in (2006) 4 SCC 385*** has held that while considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment and likewise, should not record a finding on the merits of amendment.

Learned counsel for the applicants-original plaintiffs in order to substantiate her submissions placed reliance on the following cases and some of them are already referred to herein-above in the submissions of learned counsel for the applicants:-

- i) Raghu Thilak D. John vs. S. Rayappan and others, reported in (2001) 2 SCC 472;
- ii) Rajesh Kumar Aggarwal and others vs. K. K. Modi and others reported in (2006) 4 SCC 385
- iii) Pankaja and another vs. Yellappa (dead) by L.Rs. and others,

reported in (2004) 6 SCC 415

- iv) Atul Medical, Pune vs. M/s. Cadila Health Care Pvt. Ltd.
reported in (2005) 4 Mh.L.J. 925

Learned counsel for the applicants-original plaintiffs submits that the order dated 20.02.2020 deserves to be recalled in the light of patent error of law as well as on facts.

6. By order dated 20.2.2020 in writ petition No. 2412 of 2005 this Court has dealt with all relevant submissions made by both the parties, including the submissions put forth by learned counsel while arguing this review application. The applicants original plaintiffs have instituted Special Civil Suit No. 70 of 1990 for specific performance of contract and delivery of possession of the suit property. In terms of the pleadings of the applicants-plaintiffs there are two registered agreement to sales and the main condition for agreement of the sale settled between the plaintiffs and the defendant No.1, are as under:-

- a) The possession of the property will be delivered at the time of execution and registration of the sale deed.
- b) Expenses of execution and registration of sale deed will be born by the defendant No.1 Pandurang.

7. On the basis of one document dated 11.4.1996, the applicants original plaintiffs by filing application Exh.145 on 1.9.1999 sought

amendment in the plaint by relying upon the contents of the said document dated 11.4.1996 about additional payment towards consideration amount as agreed between the parties and amendment to the extent of additional payment of consideration amount has been incorporated by way of para 8-A in the plaint way back in the year 1999 itself. However, by referring the same document dated 11.4.1996, the applicants-plaintiffs have again filed an application Exh.211 on 28.10.2004 seeking amendment in the plaint under Order VI Rule 17 of C.P.C. and the said proposed amendment is as follows:-

“That on 11.04.1996 Pandurang s/o Jagannath Agrawal and his wife Smt. Durgadevi w/o Pandurang Agrawal executed a Kararnama in favour of plaintiffs and delivered some portion of the suit premises in possession of the plaintiffs stated in the said Kararnama. Since then plaintiffs are in possession of compound of Natraj Talkies in which a shop where Novelty Typewriting Institute is situated and a canteen and open space admeasuring 38 x 17 mtrs has been given in possession of plaintiffs by Pandurang and Durgadevi and since then the plaintiffs are in possession of the said premises. Moreover, Smt. Durgadevi executed the said Kararnama for herself and as a guardian for her son namely Shriram and Shailendra. The xerox copy of the same is already filed at Ex. 88 and 89.”

8. It is consistent case and pleading of the applicants-plaintiffs that the possession was agreed to be delivered at the time of execution and registration of the sale deed. In the year 1999, the applicants-plaintiffs though sought amendment on the basis of document dated 11.4.1996, however, after a gap of more than six

years, filed an application Exh.211 introducing thereby new case that in terms of the contents of the said document dated 11.4.1996 the possession of the suit property has been delivered partly. This Court in para 6 of the order dated 20.2.2020 in writ petition No. 2412 of 2005 (sought to be reviewed) has specifically observed that just for the sake of the petition, the Court has gone through the copy of the said document dated 11.4.1996 (page 108) marked at 'Exh. L' and there is no reference about delivery of possession of some of the suit property in terms of the said document dated 11.4.1996. The proposed amendment by way of application Exh.211 is sought by referring the document dated 11.4.1996 alone with specific contentions that in the year 1999 in terms of the said document dated 11.4.1996 inadvertently the amendment about delivery of possession of part of suit property remained to be incorporated in the application Exh.145. It thus appears that with some ulterior motive the applicants-plaintiffs have introduced a new theory about delivery of possession of the suit property partly. There is no error apparent on the face of record. This court has made the aforesaid observations only for the sake of petition and not considered the merits of the proposed amendment.

9. In the case of ***Raghu Thilak D. John vs. S. Rayappan and others (supra)*** relied upon by learned counsel for the applicants, the Supreme Court had an occasion to consider the change in the nature of the suit by amendment in the plaint. In the facts of the said case,

the Apex Court held that said cannot be a reason for refusing the application for amendment and dominant purpose of Order VI Rule 17 of C.P.C. is to minimize the litigation. In the facts of the said case, the plaintiff has instituted the suit for permanent injunction restraining the defendant from demolishing his compound wall and during pendency of the suit the defendant entered in his property and demolished the wall and therefore, the amendment application came to be filed including incorporation of relief of recovery of damages. In the instant case, the facts are altogether different. The Supreme Court in para 5 of the order has referred the case of ***B.K. Narayana Pillai vs. Parameshwaran Pillai reported in (2000) 1 SCC 712*** has held that the court should not adopt a hypertechnical approach while deciding the prayers seeking amendment in the pleadings. However, the facts of the present case are altogether different and the said ratio laid down by the Supreme Court cannot be made applicable to the facts and circumstances of the present case.

10. In the case of ***Rajesh Kumar Aggarwal and others vs. K. K. Modi and others (supra)*** the Apex Court held that consideration of truth or merits of amendment is impermissible and the court should allow all amendments that may be necessary for determining the real question in controversy between the parties, provided that it does not cause injustice or prejudice to the other side. The Supreme Court held that real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is

necessary to decide the real dispute between the parties. However, the court should not go into the correctness or falsity of the case in the amendment, nor record a finding on the merits of amendment at the stage of considering the prayer for amendment. However, in the facts of the said case, in terms of the subsequent events to preserve and safeguard the rights of both parties and to sub-serve the ends of justice and to shorten the litigation the amendment was allowed. In the instant case, it appears that the aforesaid amendment by way of application Exh.211 has been sought with some ulterior motive and the same is not necessary to decide the real dispute between the parties.

11. In the case of ***Pankaja and another vs. Yellappa (dead) by L.Rs. and others (supra)*** the question of limitation has been considered, however, the said issue is not involved in the present matter. In the case of ***Atul Medical, Pune vs. M/s. Cadila Health Care Pvt. Ltd. (supra)*** this court has allowed the amendment as the plaintiff seeks to add certain subsequent events only.

12. The applicants-plaintiffs have instituted the suit way back in the year 1990 bearing Special Civil Suit No. 70 of 1990. Thus, considering the same, this Court has directed the trial court to dispose of the Special Civil Suit No. 70 of 1990, as expeditiously as possible, however, preferably within a period of one year from the date of order. It further appears that the applicants original plaintiffs

are only interested in staying the further proceedings in the suit for the reasons best known to them. Thus, considering entire aspects of the case, I proceed to pass the following order:-

O R D E R

Review application is rejected.

(V. K. JADHAV, J.)

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