

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4254 OF 2014

Dattatrya s/o Vishwnath Bobade
Age: 53 years, Occu: Business,
R/o Ganesh Peth, Basmathnagar,
Tq. Basmath Dist. Hingoli

... Petitioner

Versus

1. Nagobasa s/o Kondusa Bochkari;
Age: 70 Occu: Business
R/o Shastri nagar, College Road, Basamath
Tq. Basmath, Dist: Hingoli.
 2. Ramesh s/o Vishwthasa Bobade;
Age:- 62 years, Occu: Business
R/o C/o Kangne, Dipa Nagar,
Behind B.S.N.L. Office, Taroda Naka, Nanded
Tq. and Dist.: Nanded.
 3. Shahzad Begum w/o Amanullah Khan,
Age: Major, Occu: Household
R/o Purana Karkhana-road, Basamath.
Tq. Basmath, Dist: Hingoli.
- ... Respondents

...

Advocate for Petitioner : Mr. S. S. Kulkarni
Advocate for Respondent Nos. 1 to 3 : Mr. V. D. Salunke

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 15th DECEMBER, 2021

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition impugns the order dated 13-01-2014, passed by the learned Civil Judge, Senior Division, Basmatnagar, below Exhibit-23 in Regular Civil Suit No.13/2011, thereby rejecting the application filed by the petitioner, under Order VI, Rule 17 of the Code of Civil Procedure.

3. The suit is filed by the petitioner – original plaintiff against the respondents – original defendants for perpetual injunction for restraining defendants and their agent or anyone claiming on their behalf that they should not create any sort of obstruction to plaintiff over the lawful possession of the property bearing M.H. No.C/67 (old), C/91 (new), admeasuring East-West 20 Feet, Sough-North 30 Feet, situated at Main Road, Basmath.

4. The defendants appeared and opposed the suit by filing a written statement. The petitioner – original plaintiff, thereafter moved an application Exhibit-23 seeking amendment in the plaint as well as prayer clause, thereby seeking possession of the suit property under Section 6 of the Specific Relief Act, 1963. Corresponding amendments in the prayer clause and valuation clause, etc. are sought. The said amendment was opposed by the defendants in the trial Court. The trial Court rejected the application. Hence the present petition.

5. Heard the rival submissions of the respective parties.

Perused the documents placed on record.

6. It is not in dispute that the trial is yet not commenced. By way of amendment, the plaintiff is claiming relief of recovery of possession of the suit property under Section 6 of the Specific Relief Act, 1963. There are specific averments in the plaint to the effect that the possession of the plaintiff is required to be restored. There are also averments in the plaint that “if during the course of trial and the conclusion, the defendants prove their possession, in that event, alternatively the plaintiff submits that he was unlawfully dispossessed from the suit property just before two months, therefore, his possession required to be restored.” The foundation of the amendment is already laid in the plaint. However, while framing the prayer clause the plaintiff has failed to claim the relief of possession.

7. The trial Court rejected the amendment application by going into the merits of the amendment and held that if the amendment is allowed then the suit would be for recovery of possession under Specific Relief Act and for declaration of tenancy right of the plaintiff. Both the prayers cannot go together.

8. The impugned order is contrary to the settled legal position that amendments are to be liberally allowed and the merits of the amendment cannot be gone into at the time of considering the

amendment application. With a view to avoid multiplicity of the proceedings the amendment ought to have been allowed by the trial Court. Necessary foundation of the amendment is already laid in the plaint and the amendment appears to be necessary to decide the real controversy between the parties. The trial Court has also lost sight of the legal position that the amendment cannot be rejected on the ground of delay.

9. The learned advocate for respondents was right in submitting that the amendment application was belatedly filed after three years. In support of his submissions he relied in **Revajeetu Builders and Developers Vs. Narayanaswamy & Sons and Others**, reported in **2009 (10) SCC 84**. In the said case, the Hon'ble Supreme Court has laid down certain guidelines. One of them is, whether the amendment is necessary to decide the real controversy and second, whether no prejudice and injustice is likely to be caused to the other party. Applying the said ratio to the facts of the present case, in my view, amendment is necessary to decide the real controversy between the parties and no prejudice is likely to be caused to the defendants if the amendment is allowed.

10. For the aforestated reasons, writ petition succeeds. The impugned order passed by the learned Civil Judge, Senior Division,

Basmatnagar below Exhibit-23 in R.C.S. No.13/2011 is hereby quashed and set aside.

11. Application at Exhibit-23 is allowed. The amendment to be carried out by the petitioner – original plaintiff within a period of two weeks from the date of receipt of the writ of this order.

12. The respondents – original defendants are entitled to amend their written statement, if they so desire.

13. Rule is made absolute in the above terms, subject to cost of Rs.10,000/- to be paid by the petitioner – original plaintiff to the respondents – original defendants in the trial Court.

(NITIN B. SURYAWANSHI, J.)