

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

WRIT PETITION NO.6857 OF 2020

01. Santoshi d/o Kalyanlal Meharwal @
Santoshi w/o Rajkumar Khandelwal,
Age-51 yrs., Occu. - Household,
R/o – Jaybhawani Cloth stores,
Mainroad, Tq. & Dist. - Yadgir, Karnatak.
02. Sita @ Shweta Kalyanlal Meharwal,
@ Sita @ Shweta Shyamsunder Khandelwal,
Age-47 yrs., Occu. - Nil,
R/o -3, Manas Apartment, Shiv Mala, Nasik.
03. Radhika d/o Kalyanlal Meharwal @
Radhika w/o Sarang Methi,
Age-42 yrs., Occu.-Nil,
R/o-137/A, Near Sabu Hospital,
Sharda Nagar, Rajapeth, Amrawati.
04. Sushila d/o Kalyanlal Meharwal @
Sushila w/o Sharad Khandelwal,
Age-53 yrs, Occu.-Nil,
R/o-6, Kailas Apt., Vise Mala,
Near HPT College, Nasik-5

Petitioners No.1 to 3 through Petitioner
No.4 being their Power of Attorney holder.

... Petitioners

Versus

01. Shri Kalyanlal s/o Nandlal Meharwal,
(Deceased)
02. Shri Himmat s/o Kalyanlal Meharwal,
Age-48 yrs., Occu.-Agri. & Business,
03. Dipali d/o Himmat Meharwal,
Age-47 yrs., Occu.-Household,
Res. No.2 & 3 R/o-Isha Villa, Gulmohar
Road, Ahmednagar.
04. Smt. Manbhar Kalyanlal Meharwal,
(Deceased)

05. Premlata Purushottam Khandelwal,
Age-60 yrs., Occu.-Household,
R/o-Gurukrupa, B-455, Indira Vihar,
Kota, Tq. & Dist.-Kota, Rajasthan ... Respondents

...

Advocate for Petitioners : Mr. A. M. Gholap
Advocate for Respondent No. 3 : Mr. S. S. Patil
Advocate for Respondent No.2 : Mr. A. S. Bajaj

...

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 25th NOVEMBER, 2021

PRONOUNCED ON : 10th DECEMBER, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
2. This petition filed under Article 227 of the Constitution of India, takes exception to the order dated 09-06-2020 passed by the 10th Joint Civil Judge Senior Division, Ahmednagar below Exhibit-98 in Special Civil Suit No.125/2014, thereby rejecting the application filed by the petitioners under Order VI Rule 17 of the Code of Civil Procedure.
3. The petitioners – original plaintiffs filed Special Civil Suit No.125/2014 against defendant No.1 – father, defendant No.2 – brother and defendant No.3 – brother's wife under Sections 31, 35, 42, 45 of the Specific Relief Act, 1963 and under Section 14A of the Hindu Succession Act, 1956 seeking cancellation of two gift deeds, one of October, 2009

and another of the year 2011, as well as a registered General Power of Attorney in respect of the suit property, with a declaration that these three documents are not binding on the plaintiffs No. 1 to 4. Permanent injunction is sought in respect of the suit property.

The defendants appeared and resisted the suit by filing written statements. During the pendency of the suit, father – defendant No.1 expired and mother – defendant No.4 and sister – defendant No.5 were brought on record as legal heirs apart from defendant No.2. Defendants No. 4 and 5 filed written statements on or about 30-12-2019. Issues were framed by the trial Court on 20-01-2020.

4. The petitioners filed application at Exhibit-98 on 17-02-2020 seeking amendment in the plaint contending that the main intention of the plaintiffs at the time of filing of the suit was for partition and separate possession of their share. At the time of filing suit some of the pleadings are in respect of the relation between the plaintiffs and defendants and in respect of plaintiffs share. However, in the suit, inadvertently, contentions in respect of the partition remained to be incorporated. During the pendency of the suit plaintiffs father and mother have expired and therefore, the plaint is required to be amended. Paragraph Nos. 9(A) and 14(2)(A) were proposed to be incorporated by way of amendment in the plaint. The said application

was resisted by the respondent defendants. The trial Court rejected the application on merits. In the impugned order the trial Court has observed that when the plaintiffs are willing to pray for partition, it is also obligatory on their part to amend the title clause, jurisdiction clause, Court fee clause and also cause of action clause. Since there is no amendment proposed to these clauses, the application for amendment is defective. The said rejection order is impugned herein.

5. Heard the learned advocate for petitioners, the learned advocate for respondent No.2 and the learned advocate for respondent No.3.

6. The learned advocate for the petitioners submitted that the amendment was necessary in view of the death of father – defendant No.1 and mother – defendant No.4. The necessary foundation for the amendment is already laid in the plaint. He further submitted that since the first gift deed dated 08-10-2009 is challenged in the suit the proposed amendment and the suit cannot be said to be hit by limitation. According to him, due to inadvertence, the suit for simpliciter declaration and injunction was filed instead of seeking relief of partition. By relying on Order VI Rule 17, he submitted that the trial Court ought to have allowed the amendment application. He also submitted that the

trial is yet to commence, affidavit of in-chief/evidence is yet not filed by the plaintiffs, before that amendment application was filed, which ought to have been allowed by the trial Court. Therefore, the impugned order may be quashed by allowing the writ petition and by allowing the petition amendment application at Exhibit-98 be allowed. He relied in **Varun Pahwa Vs. Mrs. Renu Chaudhary**, reported in (2019) 15 SCC 628, and **N. C. Bansal Vs. Uttar Pradesh Financial Corporation**, reported in (2018) 2 SCC 347, in support of his submissions.

7. Per contra, learned advocate for the respondent No.2 vehemently opposed the petition contending that the amendment sought to be incorporated by the petitioners is hit by limitation since in the suit the petitioner – plaintiffs had only challenged the gift deeds executed by defendant No.1 father which in fact were executed by defendant No.1 father and defendant No.4 mother jointly. Even defendant No.4 mother was not made party defendant in the suit initially, hence, by way of amendment the plaintiff is trying to make out a new case which is not permissible in law. He supported the impugned order and submitted that the trial Court has passed a reasoned order which need not be interfered in extra ordinary writ jurisdiction.

8. Respondent No.3 adopted the arguments of respondent

No.2. He further submitted that he also supports the impugned order passed by the trial Court. According to him Article 58 of the Limitation Act would apply and not Article 110, as is claimed by the petitioners. He, therefore, submitted that the writ petition be dismissed.

9. Admittedly, during the pendency of the suit father – defendant No.1 and mother – defendant No.4 expired. After the death of defendant No.1 father, defendant No.4 mother and defendant No.5 sister were brought on record and they have filed their written statement on 30-12-2019. Issues are framed in the suit on 20-01-2020 and immediately thereafter on 17-02-2020 the application (Exhibit-98) under Order VI Rule 17 for amendment came to be filed.

10. It is a settled legal position that the Court should be liberal in allowing amendment applications. More so, with a view to avoid multiplicity of the proceedings amendment is required to be allowed.

11. In case of **Varun Pahwa** (supra), the Hon'ble Apex Court held that:-

“Rules of Procedure are handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the Rules of Procedure. Court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends

of justice and is not governed by any such narrow or technical limitations. An inadvertent mistake in the plaint which trial court should have allowed to be corrected so as to permit the Private Limited Company to sue as Plaintiff as the original Plaintiff has filed suit as Director of the said Private Limited Company. Therefore, the order declining to correct the memo of parties cannot be said to be justified in law.”

12. In case of **N. C. Bansal** (supra) the Hon’ble Apex Court held that:-

“18. It is for the reason that firstly, the suit is still at the initial stage, i.e., the trial has not yet begun; Second, the proposed amendment sought in the plaint does not change the nature of suit; Third, the applications could not be said to have been filed by the plaintiff belatedly because the suit had been dismissed by the Trial Court as not maintainable in its initial stages and for all these years it was sub judice in appeal. It is only after the Appellate Court remanded the case to the Trial Court for its trial, the appellant (plaintiff) filed the applications in the suit and sought permission to amend the plaint and file certain documents in support thereof; Fourth, the Courts, in these circumstances, should have been liberal in allowing the proposed amendment.”

13. The above ratio supports the case of the petitioners. Applying the same to the case in hand, the amendment application filed by the petitioners deserves to be allowed, also with a view to avoid multiplicity of the proceedings. Due to the death of father defendant No.1 and mother defendant No.4 the petitioners – plaintiffs are entitled to seek relief of partition and separate possession of the suit property. The proposed amendment was, therefore, necessitated due to death of father and mother. It cannot be prima facie said that the petitioners –

plaintiffs were not diligent in seeking amendment. In the light of the above ratio and the facts of the present case, the trial Court ought to have allowed the amendment of the petitioners – plaintiffs. The trial Court has failed to consider the settled legal position that amendment in the plaint is to be liberally allowed with a view to avoid multiplicity of the proceedings. In the facts of the present case the trial Court was not justified in rejecting the application for amendment filed by the petitioner.

14. As far as objection of the learned advocate for respondents on the point of limitation is concerned, the same is kept open for consideration of the trial Court. After the amendment is permitted to the petitioners the respondents are entitled to amend their written statement and contest the amended averments incorporated by the petitioners – plaintiffs on merits as well as on the point of limitation. The trial Court will consider the merits of the amended pleadings as well as the point of limitation at the time of deciding the suit.

15. In the light of aforesaid reasons, in my view, following order would meet the ends of justice:-

ORDER

(I) Writ Petition No.6857 OF 2020 is allowed.

- (II) Judgment and order dated order dated 09-06-2020 passed by the 10th Joint Civil Judge Senior Division, Ahmednagar below Exhibit-98 in Special Civil Suit No.125/2014, is hereby quashed and set aside.
- (III) Application at Exhibit-98 is allowed subject to the petitioners/plaintiffs making further consequential amendments to the title clause, jurisdiction clause, Court fee clause and to the clause of cause of action.
- (III) The point of limitation and merits of the amendment are kept open, to be decided by the trial Court at the time of final adjudication of the suit.
- (IV) Rule is made absolute in the above terms, with cost of Rs.10,000/- imposed on the petitioners/plaintiffs to be paid to the respondents/ defendants, within a period of two weeks from today.

(NITIN B. SURYAWANSHI, J.)