

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2198 OF 2021

Shri. Karbhari Dagdu Jadhav
Age Adult, Occ. Business,
R/at. Flat No.203, Ganga Apt.,
Santoshi Mata Road, Kalyan (W),
Tal-Kalyan, Dist. Thane.

2. Dr. Shankar Chintaman Sarangdhar
(Since Decd. through his LRs.)
A. Mrs. Vimal Shankar Sarangdhar
Age Adult, Occ. Housewife,
R/at.: Flat No.203, Ganga Apt.
Santoshi Mata Road, Kalyan (W),
Tal-Kalyan, Dist. Thane.

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B. Mrs. Varsha Ravindra Joshi
Age Adult, Occ. Housewife,
R/at.: 21, Oxeyton Leys, Ruges,
U.K. C.V. 225 CH.

C. Mrs. Suneeta Prakash Samant
Age Adult, Occ. Housewife,
R/at. Narayan Niwas CHS,
Subhash Cross Road, Vile Parle (E),
Mumbai – 400 057.

..Petitioners

Vs.

1. M/s. Sindhudurg Estates
A Company formed under Companies
Act, 1956, through its M.D.

2. Mr. Kalicharan D. Makhajani
Age Adult, Occ. Business,
Having office at A/2, Kshitij Apt.
Ground floor, Barave Road,
Khadakpada, Kalyan (W),
Tal. Kalyan, Dist. Thane.

..Respondents

Mr. G. S. Godbole a/w. Mr. Balasaheb Ligade, for the Petitioners.
Mr. P. K. Dhakephalkar, Senior Advocate a/w. Mr. Jagdish G.
Aradwad (Reddy), for the Respondent Nos.1 and 2.

CORAM : C.V. BHADANG, J.
RESERVED ON : 16 SEPTEMBER 2021
PRONOUNCED ON : 25 OCTOBER 2021

P.C.

. By this Petition, the Petitioners are challenging the order dated 7 December 2020 below Exhibit 234 passed by the learned Civil Judge, Senior Division at Kalyan in Special Civil Suit No.171/2002. By the impugned order, Application (Exh.234) filed by the Petitioners / Plaintiffs for amendment of plaint has been rejected.

2. Petitioner No.2 Dr. Shankar Chintaman Sarangdhar (since deceased) had filed the aforesaid suit for declaration that the Power of Attorney dated 6 March 1998 and the Development Agreement dated 28 October 1999 executed by the Plaintiff in favour of the Respondents - Defendants stands cancelled and for injunction

restraining the Respondents or anybody on their behalf from interfering with the possession of the Plaintiff's over the suit property. The Petitioner No.1 Karbhari Dagdu Jadhav was subsequently impleaded as Plaintiff No.2.

3. The suit was resisted by the Respondents and after conclusion of the evidence of the parties, was fixed for final arguments. It is at this stage that the Application (Exh.234) came to be filed for amendment of plaint by addition of paragraphs 15(A) to 15(D) and prayer clause (a-1) and (b-1). By virtue of prayer clause (a-1), the Petitioners now seek a declaration that the Development Agreement and the Power of Attorney are null and void and not binding on the Plaintiffs and by prayer clause (b-1), alternate prayer is made for possession in the event the Court comes to the conclusion that the Respondents – Defendants are in possession, of the suit property or any part thereof.

4. The Application was resisted on behalf of of the Respondents.

5. The learned Trial Court has found that by the proposed amendment the nature of the suit will change. The Trial Court also found that according to the Plaintiffs the Development Agreement and the Power of Attorney came to be terminated by virtue of an intimation and Public Notice dated 28 June 2002 and the Suit for

cancellation of the Agreement ought to have been filed within three years as per Article 59 of the Limitation Act. It has also been found that the ground that the amendment is necessitated on account of engagement of a new Advocate is not acceptable. In the face of such finding, the Application came to be rejected.

6. I have heard Mr. Godbole, the learned counsel for the Petitioners and Mr. Dhakephalkar, the learned Senior counsel for the Respondents.

7. It is submitted by the learned counsel for the Petitioners that the proposed amendment does not change the nature of the suit or the relief claimed. It is submitted that the Plaintiff had already claimed a declaration that the Development Agreement and the Power of Attorney stand cancelled. It is submitted that the prayer for possession is an alternate prayer, in the event the Court comes to the conclusion that the Plaintiff's have lost possession. It is pointed out that there is no prohibition in law or facts for seeking such alternate relief which would in fact prevent any further litigation / multiplicity of proceedings. The learned counsel pointed out that the Plaintiffs do not intend to lead any further evidence, if the amendment is allowed and therefore, no prejudice is caused to the Respondents nor the amendment would stifle the trial of the suit. It is submitted that the Trial Court was in error in refusing to grant

the amendment on the ground of limitation which cannot be done at the stage of consideration of the Application for amendment.

8. The learned Senior counsel for the Respondents has supported the impugned order. It is submitted that initially the Plaintiffs had sought a declaration that the POA and the Development Agreement are cancelled and now a declaration is sought that they are void *abinitio* and thus the proposed amendment clearly results into change of the nature of the suit and the relief claimed. It is submitted that the Application is filed at a belated stage after conclusion of the evidence and the Applicant and the Petitioners have not shown due diligence and the ground of engagement of new Advocate has rightly been rejected. The learned counsel submitted that an alternate prayer also cannot be considered in as much as it has all along been the case of the Plaintiffs that they are in possession of the suit property.

9. I have carefully considered the rival circumstances and the submissions made.

10. Broadly speaking, the amendment is in two parts. The first is with reference to the addition of a declaration that the POA and development agreement are void *abinitio*. The initial prayer made in the suit is that both these documents stand cancelled by virtue of

the intimation and public notice dated 28 June 2002. The second is with reference to the addition of an alternate prayer on the ground that although the plaintiffs are in possession, however if the Court comes to the contrary conclusion, a decree for possession may be passed. In my considered view, the first part clearly is at variance with the relief claimed in the original suit. There is a clear distinction between a declaration about cancellation of a particular document/s which does not presuppose that the document was invalid since inception. Quite to the contrary, a declaration that the document is void *abinitio* would tantamount to a declaration that it is non est in the eyes of law. In my considered view, therefore, the learned Senior counsel for the Respondents is right in submitting that the said prayer changes the nature of the suit that too at a stage where the parties have concluded their evidence.

11. The learned counsel for the Petitioners in such circumstances fairly submitted that the amendment to the extent of alternate prayer for possession be granted. It is true that in a given case a party can pray for an alternate relief. However, in the present case, it has all along been the case of plaintiffs that they are in possession of the suit property and now the alternate prayer is made in the event the Court comes to a contrary conclusion as it is the case of Respondents that they are in possession. It is significant to note that the Plaintiffs by virtue of the said amendment are not coming with a

specific case as to when the plaintiffs could have likely lost possession. To put it differently if the Court comes to the conclusion that since inception of the suit the plaintiffs were never in possession and upholds the defence of the Respondents / Defendants, clearly the alternate prayer at this distance of time cannot ex facie be considered or granted.

12. I have gone through the impugned order and it does not suffer from any infirmity so as to require interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The Petition is without any merit and is accordingly dismissed. In the circumstances, there shall be no order as to costs.

13. At this stage, the learned counsel for the Petitioners states that the Petitioners be granted liberty to raise the ground in an Appeal in the event the final decree passed in the suit is against the Petitioners. Once the Petition is dismissed on merits, it is not possible to grant such liberty.

C.V. BHADANG, J.