

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2445 OF 2015**

Shri Rahul Bapuso Patil	 Petitioner.
V/s	
Shri Ashok Surgonda Patil	 Respondent.

Mr. Tejpal S. Ingle for the Petitioner.
Mr. Dilip Shinde i/b Mr. Vilas Mali for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 15, 2021

P.C.:-

1] This Petition is by the original Plaintiff in Regular Civil Suit No.44 of 2009 for perpetual injunction, who moved an application-Exhibit-71 for amendment of the Plaint after trial is commenced, seeking decree for possession.

2] The original suit is filed for simpliciter declaration and injunction.

3] It appears that there is temporary injunction in favour of the Petitioner/Plaintiff restraining the Defendants from interfering with

his possession, which speaks of plea of the Petitioner/Plaintiff of settled possession over the suit property.

4] By way of amendment, Petitioner/Plaintiff has come out with a case that the Respondent/Defendant has entered in the property and as such he is forced to seek relief of recovery of possession.

5] Mr. Ingale, learned Counsel for the Petitioner, while questioning the order impugned whereby prayer for amendment was rejected, has invited my attention to the fact that the amendment was sought by incorporating prayer for possession with intention to avoid multiplicity of proceedings. Drawing support from the judgment of the Apex Court in the matter of *Chakeshwari Construction Private Limited vs. Manohar Lal* reported in (2017) 5 SCC 212, he would urge that the factors/principles which are required to be taken into consideration while allowing or rejecting the application for amendment can be summarized as under:-

- “(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.”

According to him, the case of the Petitioner is squarely covered by the said principles and that being so, court below has committed an error in rejecting the prayer for grant of the amendment.

6] The learned Counsel for the Respondent/Defendant supported the order impugned and sought dismissal of the Petition on the ground that the prayer for amendment is based on vague pleadings and the same is moved by way of afterthought.

7] Consider rival submissions.

8] It is not in dispute that there operates interim injunction in favour of the Petitioner/Plaintiff whereby Respondent/Defendant is restrained from interfering with the possession of the Plaintiff over the suit property. The suit is based on the title deed.

9] By way of amendment, Petitioner has come out with a case that Respondent/Defendant has dispossessed him during pendency of the suit. If one resorts to the pleadings raised by the Petitioner in the application for amendment i.e. Exhibit-71, pleadings therein does not specify as to the period, month and the date when Petitioner was dispossessed or when Respondent/Defendant has trespassed in the suit property.

10] Rather it appears that it is only by way of afterthought the Petitioner has come out with a case that he needs to improve prayer in his suit by incorporating the prayer for possession, particularly in the backdrop that he could not secure possession of the suit property under the garb of operation of injunction order. Pleadings in the amendment application are too vague to infer that the

Petitioner/Plaintiff has got cause of action for the said amendment during pendency of the suit.

11] The suit is initiated by the Petitioner way back in 2009. The injunction is enjoyed by him on his claim that he is in settled possession. As observed, it is not specified as to when he has lost possession and as such amendment does not appear to be bonafide.

12] In the aforesaid backdrop reliance placed on the judgment of the Apex Court in *Chakreshwari Construction Private Limited* cited supra is misplaced. That being so, no case for interference in extraordinary jurisdiction is made out. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)