

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO.2132 OF 2021

Moonlight Housing Scheme Pvt. Ltd. & Anr. ..Petitioners

V/s.

Sou. Alka @ Smitanjali Nandkumar

Bhujbal & Ors.

.Respondents

Mr.P.S. Dani, Senior Advocate a/w Mr.Chetan G. Patil for the
Petitioners.

Mr.Tejesh Dande a/w Mr.Bharat Gadhavi, Mr.Vishal Navale,
Mr.Aniket Aghade i/b Tejesh Dande & Associate for Respondent
No.1.

CORAM : C.V. BHADANG, J.

RESERVED ON : 15 September 2021

PRONOUNCED ON : 4 October 2021

P.C.

. By this petition the petitioners are challenging the order dated 7 May 2021 passed below Exhibit-119 by the learned Civil Judge Junior Division, Pune in RCS No.2120 of 1999. By the impugned order, application below Exhibit-119 filed by the respondent No1-plaintiff for amendment of the plaint has been allowed.

2. The respondent No.1 has filed aforesaid suit against the petitioners and the respondent Nos.2 to 13. The petitioner No.1 happens to be the defendant No.14, while the petitioner No.2 is the defendant No.1 in the suit. The suit is filed for partition and separate possession and for injunction in respect of the suit property. The material case made out in the plaint is that the suit property has been inherited by the plaintiff and the defendant Nos.1 to 13 after the death of Tanhubai Kodre on 8 November 1996. The respondent No.1 has also challenged the sale deed dated 27 February 1989 executed by the deceased Tanhubai in favour of the petitioner No.2 and a will dated 23 March 1982 executed by Tanhubai.

3. It appears that the petitioner No.2 has executed a Development Agreement and Power of Attorney in favour of the petitioner No.1 on 29 February 2012 which is bearing No.1716/2012. It further appears that upon execution of the said Development Agreement and Power of Attorney the petitioner No.1 (defendant No.14) came to be impleaded in the suit and as per prayer Clause 9ccc the Development Agreement has been challenged. However, there is an inadvertent/typographical error which has crept in the prayer clause where the serial number of the Development Agreement is mentioned as 17/06/2012 instead of 1716/2012. This is one of the typographical errors which the

plaintiff proposes to correct by virtue of the proposed amendment.

4. Be that as it may, the respondent No.1 filed Application Exhibit-119 for amendment of the plaint *inter alia* for correction of the number of the Development Agreement as aforesaid. The respondent No.1 is also seeking amendment of the survey number as 61/21. It is contended that in the plaint the property is described by the old Survey No.61/2B/2 which admeasures 3H 63 R's, out of which 0H 64 R's is the property involved in the suit. It is contended that the said portion has now been allotted Survey No.61/21. Apart from these corrections the respondent No.1 proposes to add paragraph 4A and paragraph 5A to 5F and 6B in the plaint.

5. The learned Trial Court has found that the proposed amendment insofar as the change of survey number and the typographical error in mentioning the number of the Development Agreement deserves to be allowed. Even so far as the introduction of paragraph 4A and paragraph 5A to 5G are concerned the learned Trial Court has found that they are incidental facts *inter alia* on account of the subsequent event of commencement of the development activities on the suit property, by the petitioner No.1, in pursuance of the development agreement. Thus, the Trial Court has found that the proposed

amendment is necessary for deciding the real controversy in the suit and therefore has been allowed.

6. I have heard the learned counsel for the parties.

7. It is submitted by Mr.Dani, the learned Senior Counsel for the Petitioners that the proposed amendment is belated and extensive pleadings is sought to be introduced which were within the knowledge of the respondent No.1-plaintiff. It is submitted that although the trial has not commenced in the suit, the considerations about due diligence would arise even in the absence of the strict application of the proviso to Order VI Rule 17 of Civil Procedure Code. It is submitted that the only ground made out for not incorporating the pleadings earlier is about lapse of the advocate which cannot be accepted. It is submitted that proposed amendment would change the nature of the suit and would cause prejudice.

8. The learned counsel for respondent No.1 has supported the impugned order. It is submitted that the proposed amendment is in the nature of correction of the typographical/inadvertent error and even the proposed amendment by introduction of the certain paragraphs is in consonance with the case already setup.

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

10. The material case of the plaintiff as noticed earlier is that after the death Tanhubai, the suit property came to be inherited by the plaintiff and the defendant Nos.1 to 13. The plaintiff has also challenged the Will dated 23 March 1982 as being rendered inoperative and the Sale deed dated 27 February 1989 executed by Tanhubai. The Plaintiff has also challenged the Development Agreement dated 29.02.2012 executed by the defendant No.1 in favour of the defendant No.14 i.e. between the petitioners.

11. As noticed earlier the plaint has also been amended to incorporate a challenge to the Development Agreement except that there is a typographical error in mentioning the number of the said agreement as 17/06/2012 instead of 1716/2012. The change in the survey number is owing to the change in the Government record. Insofar as the addition of the prayer clauses and paragraph 4A and paragraph 5A on wards I have carefully gone through the same in the context of the pleadings already made and I do not find that the proposed amendment introduces any new case or changes the nature of the suit so as to result into surprise or a prejudice to the petitioners/contesting defendants. That apart the proposed amendment by addition of paragraph

5(ee) etc is consequent upon the construction license obtained by the petitioner No.1 and the proposed development which are clearly subsequent events. Admittedly the trial has not commenced and therefore strict regour of proviso to Order VI Rule 17 of C.P.C. does not apply. It is now well settled that the Court can allow all such amendments which are necessary for deciding the real controversy in the suit and one of the resultant effect is to avoid multiplicity of proceedings.

12. In my considered view, therefore, the proposed amendment has rightly been allowed. The Petition is without any merit and it is accordingly dismissed with no order as to costs.

C.V. BHADANG, J.

**NILAM
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