

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4330 OF 2021**

Bansi Rangnath Nagre & Ors .. Petitioners
Versus
Raghunath Mahadu Nagre & Ors .. Respondents

**WITH
WRIT PETITION NO.8599 OF 2021**

Raghunath Mahadu Nagare .. Petitioner
Versus
Bansi Rangnath Nagare & Ors .. Respondents

...

Mr.Girish Agrawal for the petitioners in WP 4330/21.
Mr.Sachin Gite for petitioner in WP 8599/21 and for respondent
in WP 4330/21.

**CORAM: BHARATI DANGRE, J.
DATED : 7th DECEMBER 2021**

P.C:-

1 Rule. Rule made returnable forthwith. Heard by
consent of parties.

2 One of the necessary purport of amendment of
pleadings, being to avoid multiplicity of litigations, the two writ
petitions which impugn the orders passed on the respective
applications made by the plaintiffs/defendants, are to be tested on
the said parameter.

3 The defendant Raghunath Nagare filed a Special Civil Suit No.3 of 2015 for partition and separate possession of his share. In the said suit, the petitioner Bansi R.Nagare is impleaded as defendant no.1. The written statement came to be filed traversing the pleading in the plaint and based on which the issues were settled by the learned Judge on 26th April 2016. The primary issues settled is; whether the plaintiff has proved that the suit property is joint family property of plaintiff and defendants, and whether defendants have prove that in the partition, effected on 2nd February 1995, the plaintiff has been accorded his share.

4 On 10/12/2018, the plaintiff filed his evidence affidavit. While the Suit was pending for cross-examination, on 6th February 2021, the defendant took out an application under Order 6 Rule 17 of the CPC, seeking amendment of the written statement on the premise that the plaintiff had purchased some additional property in the name of his two sons and therefore, he sought amendment in his written statement by adding the said property located in Mouje Dongargaon as the suit property.

At the very same time, the plaintiff also filed an application under Order 6 Rule 17 on 18th February 2021 alleging that the defendants have also purchased some property and they should also be included in the suit property. Thus, the plaintiff and defendant conversely allege buying of certain properties, during the pendency of the Suit and prayed that these

properties should be included as 'suit properties' the plaintiff also sought under Order 1 Rule 3 (impleadment of the necessary party).

5 Both the applications are rejected by the learned Judge on 23rd March 2021, by two separate orders.

While rejecting the application of the defendants, the learned Judge has reasoned that the issues were framed on 26th April 2016 and the plaintiff has tendered his evidence affidavit and the case is pending for cross-examination. Recording that Order 6 Rule 17 cannot be construed liberally as the proviso contemplate that unless due diligence has been demonstrated, before a party seek an amendment, after the commencement of the trial, the amendment shall not be allowed. The same reasoning is adopted by the learned Judge while rejecting the application filed by the plaintiff seeking an amendment in his own plaint.

6 When the applications filed by the plaintiff seeking amendment in the Suit are perused, it can be clearly discerned that the facts which are sought to be brought and included in the Suit are the subsequent events and in any case, if the partition is to be effected in true and real sense, all the properties which are purchased by the respective parties must come in hot-potch and then thereafter divided in partition, without which the entire exercise would be futile. The proviso of Order 6 Rule 17 is an

exception to the main provision which permit amendment of pleadings in a Suit at any point of time, if it is intended to achieve avoiding multiplicity of litigation and is necessary for effective adjudication of the claim staked.

In any case, since the plaintiff and defendant both are seeking amendment of their pleadings by bringing the subsequent events on record and particularly when the Suit is pending at the stage of cross-examination since 2018, interest of justice would be better served if the applications are allowed rather than rejecting the same on the pretext that due diligence is not exhibited.

7 The impugned orders, which fail to take into consideration the true purport of an amendment, therefore, deserve to be set aside and are accordingly set aside.

8 Both the Writ Petitions are allowed.

9 Rule is made absolute in the aforesaid terms.

However, I cannot refrain myself from noting that the Suit is pending since 2015 and the issues have been framed since 2016. The learned Judge is therefore, requested to dispose of the Special Civil Suit No.3 of 2015 within a period of six months.

SMT. BHARATI DANGRE, J