

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

WRIT PETITION NO.11845 OF 2019

Shri. Nitin D. Nyati & Anr. ..Petitioners
V/s.
Pune Municipal Corporation & Ors. ..Respondents

**WITH
WRIT PETITION NO.12671 OF 2019**

Cassia Court CHS Limited ..Petitioner
V/s.
Pune Municipal Corporation & Ors. ..Respondents

Mr. Jaideep S. Deo, for the Petitioners in WP/11845/2019.
Mr. Prasad S. Dani, Senior Advocate i/b Mr. Sanjay K. Gunjekar
for Respondent No.2 & for Petitioner in WP/12671/2019.
Mr. Abhijit P. Kulkarni for Respondent No.1.

CORAM : C.V. BHADANG, J.

**RESERVED ON : 15 SEPTEMBER 2021
PRONOUNCED ON : 17 DECEMBER 2021**

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1. The Challenge in both these petitions is to the order dated 7 September 2019 (below Exhibit-238) passed by Learned Civil Judge Senior Division, Pune, in Special Civil Suit No. 661 of 2002 by which the application Exhibit 238 filed by the First Respondent-Pune Municipal Corporation, for amendment of plaint has been allowed. As such both these petitions are being disposed of by this common order.

2. The brief facts necessary for the disposal of the petitions may be stated thus.

The First Respondent-Corporation (plaintiff) has filed the aforesaid suit, seeking a declaration that the execution of the agreement dated 6 June 1996 and the sale deed dated 24 August 1995 between the plaintiff and the Defendant No.1- Cassia Court CHS Limited have been obtained by misrepresentation and fraud and the same are illegal and null and void. The plaintiff has sought a decree for possession of the suit property which comprises of plot bearing FP No.302 admeasuring 21,600 sq.ft. which is part of the Sangamwadi Town Planning Scheme at Pune. The aforesaid Society was formed by the backward class employees of the Plaintiff-Corporation. The case as made out in the plaint is that the aforesaid Society, through its chief promoter, had approached the Corporation with a request to allot land to the Society in order to enable the members of the Society, who are employees of the Corporation, to have residential premises of their own. Accordingly, an agreement was entered into between the parties on 6 June 1994, in which the Society had agreed to pay the amount of Rs. 12,09,600/- as consideration, which was accordingly paid in installments. The possession of the plot was delivered on 6 June 1994 followed by the sale deed.

3. Nitin Nyati and Nyati Developers Pvt. Ltd., who are the petitioners in Writ Petition No.11845 of 2019, are Original Defendant Nos.2 and 3. The Society is the petitioner in Writ Petition No.12671 of 2019 which is Defendant No.1 in the writ.

4. The record discloses that the suit was resisted on behalf of the Defendant Nos.1 to 4 *inter alia* on the ground that the suit is bad because of non-joinder of necessary parties. Learned Trial Court framed issues on 15 March 2005 including the issue on the point of the non-joinder of necessary parties and certain additional issues were framed on 30 September 2008. The issues were recast on 2 July 2019.

5. The trial proceeded and the parties led oral and documentary evidence. The parties also advanced their arguments and when the suit was fixed for rejoiner on behalf of the plaintiffs, the application Exhibit 238 came to be filed under Order VI Rule 17 of the Code of Civil Procedure (for short "CPC") for amendment of the plaint, proposing to add Defendant Nos. 12 to 24 apart from, addition of paragraph No.11A and amendment to the prayer clause.

6. It appears that the Original Defendant Nos. 5 to 11 gave their no objection for allowing the amendment.

7. The application was resisted by the Original Defendant Nos. 1 to 4, *inter alia*, on the ground that the same is belated and cannot be entertained after the commencement of the trial, as the Plaintiff has not satisfied the requirements of the proviso to Order VI Rule 17 of the CPC. It was also contended that the Plaintiffs have not shown any sufficient cause for allowing the amendment at such belated stage.

8. Learned Trial Court, by the impugned order, has allowed the application. Hence, this petition.

9. I have heard learned counsel for the parties and perused record.

10. It is submitted by the learned counsel for the petitioners that the amendment could not have been allowed, in the circumstances, after the oral evidence of the parties was concluded and even arguments were heard and the suit was only at the stage of the rejoinder on behalf of the Plaintiff. It is submitted that the amendment is of substantial nature, including the change of the description of the property and seeking amendment of the prayer clause. It is submitted that the Plaintiff seeks to add prayer clause seeking relief of mandatory injunction for demolition of the building which is barred in view of the decree passed by the Civil Court in RCS No. 1048 of 2000. It is

submitted that the learned Trial Court was in error in considering the application also under Order I Rule 10 of CPC. It is submitted that the provisions of Order VI Rule 17 of CPC, for amendment of pleading and under Order I Rule 10 of CPC for addition of parties have different object and operate in different spheres. It is submitted that the trial having commenced, the application could not have been entertained in view of proviso to Order VI Rule 17 of the CPC. The Plaintiff has not demonstrated that in spite of due diligence he could not have brought the amendment before commencement of the Trial. It is submitted that the Trial Court was in error in holding that the amendment was necessary for deciding the real controversy in the suit. Learned counsel pointed out that the plaintiff, which is the Municipal Corporation, was aware of the transactions in favour of the proposed Defendants as the Corporation was issuing tax bills and therefore, it cannot be accepted that the Plaintiff-Corporation was unaware of the said fact. On behalf of the Respondent No.1 reliance is placed on the decision of the Supreme Court in *Vidyabai & Ors. Vs. Padmalatha & Anr.*¹ and the decision of this Court in *Chhabubai Haribhau Badakh Vs. S. H. Khatod & Sons & Anr.*,².

11. The learned counsel for the First Respondent-Corporation has supported the impugned order. It is submitted that the

¹ (2009) 2 SCC 409

² 2009 (9) Mh.L.J. 760.

proposed amendment, including addition of the parties, has rightly been allowed as the same is necessary for deciding real controversy in the matter. It is submitted that the proposed defendants are also necessary parties and have rightly been directed to be impleaded. The learned counsel pointed out that there was an order dated 8 April 2015 passed by the Trial Court below Exhibit-48 by which the Defendant No.1 was directed to produce original sale deed dated 24 August 1995 and the Defendant Nos. 2 to 4 were directed to produce development agreement and power of attorney which they failed to produce. It is thus submitted that now the Defendants cannot turn around and claim that the Corporation was aware of the various transactions as it was issuing the tax bills. On behalf of the Respondent No.1 reliance is placed on the decision of the Supreme Court in *Surender Kumar Sharma Vs. Makhan Singh*³, *Rajesh Aggarwal Vs. K. K. Modi, Vs. K. K. Modi*⁴, *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Ors.*⁵, *Amit Kumar Shaw & Anr. Vs. Farida Khatoon & Anr.*⁶, *Kasturi Vs. Iyyamperumal & Ors.*⁷

12. I have considered the rival circumstances and the submissions made. It is a matter of record that the suit is filed seeking a declaration that the agreement dated 6 June 1994 and

³(2009) ALL SCR 2452

⁴AIR 2006 SC 1647

⁵(1992) 2 SCC 524

⁶(2005) 11 SCC 403

⁷ (2005) 6 SCC 733

the sale deed dated 24 August 1995 have been obtained by misrepresentation and fraud and are null and void. The record also discloses that the Defendant Nos. 1 to 4, who are the contesting Defendants, have raised a plea of the suit being bad for non-joinder of necessary parties and the issue to that effect is framed by the Trial Court. It is also undisputed that the oral evidence was led by the parties and after conclusion thereof, the arguments were advanced and only when the suit was at the stage of rejoinder on behalf of the plaintiff that the application Exhibit 238 came to be filed.

13. The Trial Court has noted that although the application is filed under Order VI Rule 17 of the CPC, apart from seeking amendment of the pleadings, it also seeks addition of parties namely Defendant No. 12 to 24 and therefore, the application can be considered in the context of Order I Rule 10 of CPC. The label of the application, as to the provision under which it is filed is not decisive. The question is always of the contents and substance of the application and the nature of the reliefs sought. Thus, considering the tenor of the application, the Trial Court is right, that it can also be considered under order I Rule 10 of the CPC alongwith Order VI Rule 17 of CPC. Insofar as amendment to the pleadings are concerned, it is now well settled that as such amendments, which are necessary for deciding the real controversy in the matter, have to be allowed. One of the salutary

objects which is sought to be achieved, is of avoiding multiplicity of proceedings. It is true that after introduction of proviso to Order VI Rule 17 of CPC, there is an additional requirement of the plaintiff to demonstrate that the amendment could not have been brought in spite of due diligence, if the amendment is sought after commencement of the trial. The proviso to Order VI Rule 17 of CPC cannot be read as a blanket embargo on the power of the Court to allow the amendment, if it is otherwise found to be necessary. It only shows that if the amendment is brought after the commencement of the trial, the plaintiff has to demonstrate that inspite of due diligence, it could not be brought prior to such commencement. The contention on behalf of the petitioner is that the Plaintiff-Corporation was issuing tax bills and therefore was aware of the various transactions in respect of the tenements constructed on such property in favour of persons who are now sought to be added as Defendants. The contention, in my considered view, cannot be accepted in this case for the reason that the Corporation or a public body in such a case, cannot always be equated with an individual party. The very nature of the Corporation and its working would indicate that it works on an impersonal machinery with periodical change of the officers and employees holding different hierarchial position in the Corporation. Therefore, at least in the present case, it is not possible to accept that only because the Corporation was issuing the bills, there is absence of due diligence. There is one more

reason why the contention on absence of due diligence and the constructive knowledge of the Corporation, cannot be accepted. As noticed earlier the Plaintiff-Corporation had filed an application Exhibit 48 directing the Defendant No. 1 to produce the sale deed dated 24 August 1995 and the Defendants Nos. 2 to 4 to produce development agreement. It was pointed out on behalf of the First Respondent that inspite of order dated 8 April 2015, the documents were not supplied. Had such documents been supplied, which was prior to the commandment of the trial, the amendment and addition could have been sought earlier. Therefore, in my considered view the contention of absence of due diligence as raised on behalf of the petitioners cannot be accepted.

14. Coming to the issue of the addition of parties, it is well settled that the Court can add or strike out parties at any stage of the proceedings. Insofar as addition, with which we are presently concerned, the same can be done when the Court finds that the proposed Defendants are necessary parties or proper parties. The perusal of the impugned order would show that the Trial Court has considered that the nature of relief if granted would directly affect proposed the Defendants and therefore it would be proper to direct their impleadment. The Trial Court has also found that in the absence of these Defendants which were proposed to be added and whose right, title and interest is likely to be affected,

the relief claimed in the suit cannot be considered or granted. The Trial Court has also found that the proposed amendment neither causes any prejudice to the Defendants nor changes the nature of the suit. It is necessary to note that essentially the relief is in respect of the agreement of the year 1994 and the sale deed of the year 1995 which still continues to be the relief sought in the suit.

15. It is not necessary to multiply authorities on the point, as principles which are germane, while considering a prayer for amendment/impleadment, are too well settled, to be restated. However, a brief reference may be made to the cases cited on behalf of the petitioners. In *Vidyabai and Ors.* the Trial Court had refused to grant amendment to the written statement and production of documents, after plaintiff had filed his evidence and the suit was fixed for cross-examination. The Supreme Court found that the High Court without going into the facts allowed the production of the documents, while upholding the refusal of amendment of the written statement. The Supreme Court found that under proviso to Order VI Rule 17, it is pre-condition that the Court should be satisfied that inspite of due diligence, party could not introduce amendment before commencement of the trial, which is a jurisdictional fact as Rule 17 of Order VI of CPC is couched in mandatory form. It was also found that the production of documents could not have been allowed after the

commencement of the trial when the amendment of written statement was not allowed.

16. In the case of *Chhabubai Vs. S. H. Khatod & Sons & Anr.* this Court has reiterated the well established legal principles that the amendment cannot be allowed after commencement of the trial in the absence of demonstration of the requirement of due diligence. However, it is necessary to emphasise that the question whether there is due diligence or not would clearly depend upon facts and circumstances of each case.

17. Insofar as the contention based on the permissibility of the amendment in view of the decision of the Civil Court in RCS No. 1048 of 2000 is concerned, it is trite that at the stage of considering the prayer for amendment the merit of the amendment cannot be gone into. All such contentions on merits in the suit are left open to be decided by the trial court.

18. I have carefully gone through the impugned order and I do not find that a case for interference in the impugned order is made out in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The petitions are without any merit, and are accordingly dismissed with no order as to costs.

At this stage, the learned counsel for the Petitioners seeks extension of the interim relief.

Upon hearing the learned counsel for the parties the interim relief, already operating, to continue for three weeks.

(C.V. BHADANG, J.)