

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 2243 OF 2019
IN
SUIT NO. 1370 OF 2019**

Ajay Kishore Sadarangani ...Applicant
In the matter between
Ajay Kishore Sadarangani ...Plaintiff
Versus
Shaku Kishore Sadarangani & ors. ...Defendants

Mr. Karl Tamboly a/w Yasmin Bhansali, Ms. Prachi Singh &
Mr. Ashutosh Agarwal, for the Applicant/ Plaintiff.
Dr. Abhinav Chandrachud, a/w Mr. R. A. Shah, Mr. Rishab
Jain, i/b Mansukhlal Hiralal & Co., for Defendant nos.1,
2 and 3.
Mr. Dhaval Zaveri, for Defendant nos.4 and 5.

CORAM: N. J. JAMADAR, J.

DATED : 10th DECEMBER, 2021

ORDER:-

1. By virtue of this application under Order VI Rule 17 of the Code of Civil Procedure, 1908, the plaintiff – applicant seeks to amend the plaint.
2. The substance of the application is that the applicant has instituted the suit for administration of estate of his deceased father Kishore Sadarangani, as per Will dated 16th February, 2015. Defendant no.1 is the mother, and defendant nos.2 and 3 are the sister and brother, respectively, of the plaintiff. The suit is instituted with the assertion that defendant no.1, who has

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been appointed as the executrix of the Will dated 16th February, 2015, has refused to discharge her fiduciary obligations under the said Will, and the defendant nos.1 to 3 started to intermingle with, divert and deplete the deceased's estate to the prejudice of the plaintiff.

3. In the instant application, it is averred that the said Will dated 16th February, 2015, executed by the deceased, was preceded by a family arrangement arrived at within the family of the deceased, namely the deceased, defendant nos.1, 2 and 3 and the plaintiff, with respect to the distribution of the assets owned by the deceased jointly with defendant no.1 and also those solely owned by the deceased. In furtherance of the said family arrangement, the deceased had executed the Will on 16th February, 2015. Defendant no.1 has also executed and registered a Will 16th February, 2015 to give effect to and implement the said family arrangement. The plaintiff, thus, proposes to incorporate averments in respect of the said preceding family arrangement in the plaint, by taking out this application.

4. The application is resisted by defendant no.1 by filing an affidavit-in-reply. Defendant no.1 has questioned the very tenability of the suit as the plaintiff has also instituted petition

for grant of Letters of Administration, with Will annexed bearing Petition No.2638/2019. The primary purpose of this suit is to seek injunctive reliefs. Defendant no.1 has revoked her Will dated 16th February, 2015 and has executed another Will dated 24th July, 2019, and disinherited the plaintiff. The endeavour of the plaintiff is to fill in the lacuna by asserting that there was antecedent family arrangement. The proposed amendment would change the nature of the suit completely. It will cause serious prejudice to the defendants. Hence, the application does not deserve to be allowed.

5. Defendant nos.2 and 3 have also resisted the application by filing affidavits-in-reply adopting the contentions of defendant no.1.

6. I have heard Mr. Tamboly, the learned Counsel for the applicant and Dr. Chandrachud, the learned Counsel for the defendants, at some length. Perused the averments in the plaint, application and the affidavits-in-reply.

7. Mr. Tamboly, the learned Counsel for the applicant, submitted that the proposed amendment is in the nature of elaboration of the cause set up by the plaintiff – applicant in the plaint. It neither changes the nature of the claim nor causes any prejudice to the defendants. Since the amendment is at

the pre-trial stage, no injustice would be caused to the defendants as they will have efficacious opportunity to meet the case sought to be set up by the applicant by way of amendment. Attention of the Court was invited to the averments in the plaint to demonstrate that the proposed amendment, by no stretch of imagination, sets up a new case.

8. In opposition to this, Dr. Chandrachud would urge that since the application is moved at a pre-trial stage, ordinarily, such amendments deserve to be allowed, yet, in the facts of the case, the proposed amendment cannot be allowed as it has the propensity to change the very nature of the suit. It was submitted that a suit for administration is sought to be converted into a suit for specific performance of the alleged family arrangement, preceding the execution of the Will by the deceased. Emphasis was laid on prayer Clause 1(a), which is proposed to be added. Since a declaration is sought therein that the Will of the deceased and the Will executed by defendant no.1 record family arrangement, the very nature of the suit would be completely altered, urged Dr. Chandrachud. Such an amendment cannot be allowed even at pre-trial stage, was the thrust of the submission on behalf of the defendants.

9. To lend support to the aforesaid submission, Dr. Chandrachud placed reliance on a judgment of the Supreme Court in the case of *Punjab National Bank vs. Indian bank and another*,¹ wherein after adverting to the previous pronouncements, the Supreme Court culled out the principles which are required to be kept in view while considering the prayer for amendment of the pleadings. The following observations in paragraph 17 are material:

“17. The position that emerges from the decisions referred to earlier is that an amendment would generally not be disallowed except where a time-barred claim is sought to be introduced, there too it would be one of the factors for consideration or where it changes the nature of the suit itself or it is mala fide or the other party cannot be placed in the same position had the plaint been originally filed correctly, that is to say, the other side has lost right of a valid defence by subsequent amendment.”

10. In an application for amendment of the pleadings, two overarching principles govern the determination. One, whether the proposed amendment is necessary for determining the real question in controversy between the parties. Two, the element of potentiality of the prejudice likely to be caused to the adversary in the event the amendment is allowed. It is thus stated that all amendments ought to be allowed which satisfy two conditions; (a) the amendment being necessary for the

1 (2003) 6 Supreme Court Cases 79.

purpose of determining the real question in controversy; (b) the amendment does not cause injustice to the other side.

11. If the proposed amendment is of such a nature that it deprives the adversary of accrued or vested right or completely changes the nature of the claim in the sense that the adversary cannot be put in the same position, the prayer for amendment is appreciated with an element of strictness. In rest of the cases, where the prejudice or inconvenience likely to be caused to the defendants is not of such degree, the applications are generally allowed.

12. In the case at hand, it is imperative to note that in paragraphs 9.2 to 9.4 of the plaint, the plaintiff has averred that the deceased and defendant no.1 had simultaneously executed the Wills on 16th February, 2015 and the deceased had taken steps to implement the disposition sought to be given effect to by the Wills. In this context, the question as to whether the simultaneous execution of the Wills by the deceased and defendant no.1 was in pursuance of the antecedent family arrangement assumes the character of a historical fact. The declaration, sought by the plaintiff, by way of proposed amendment, that those Wills were executed in furtherance of the family arrangement thus does not change the nature of the

suit as it still retains the character of suit for administration. In the context of the dispute, the proposed amendment seems to be necessary to determine the real question in controversy between the parties.

13. Would the plaintiff succeed at the trial or not, does not matter. Merits of the amendment are not required to be delved into at this stage. The reliance placed by Mr. Tamboly on the judgment of the Supreme Court in the case of *Rajesh Kumar Aggarwal and others vs. K. K. Modi and others*,² appears to be well founded. In paragraph 19 of the said judgment, the Supreme Court has observed as under:

“19. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”

14. Since the proposed amendment is at a pre-trial stage, the potentiality of the prejudice to the defendant is also minimal. The defendants will have adequate opportunity to meet the case sought to be set up by the plaintiff by way of proposed amendment. Hence, the following order:

2 (2006) 4 Supreme Court Cases 385.

: O r d e r :

- (i) The application stands allowed.
- (ii) The plaintiff shall carry out the amendment in terms of the Schedule appended to the application, within a period of three weeks from today.
- (iii) The amended copy of the plaint be served on the defendant within a period of two weeks thereafter.
- (iv) The defendants shall file written statement within a period of six weeks of being served with the amended copy of the plaint.

The Application accordingly stands disposed of.

[N. J. JAMADAR, J.]