

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1589 OF 2021

Ramesh s/o Jethanand Nawani,
Aged about 57 years,
Occupation-Business,
R/o. Nawani Niwas, Near Vitthal Mandir,
Nandura, Tah. Nandura, Distt. Buldhana.... Petitioner
(Original Plaintiff)

.. Versus ..

- 1] Ashok s/o Jethanand Nawani,
Aged about 58 years,
Occupation-Business,
R/o. Aditya Bungalow,
Sankalp Colony, Nandura,
Tah. Nandura, Dist. Buldhana.
- 2] Sharda w/o Ashok Nawani,
Aged about 55 years,
Occupation-Household,
R/o. Aditya Bungalow,
Sankalp Colony, Nandura,
Tah. Nandura, Dist. Buldhana.
- 3] Sima @ Nilam w/o Ramesh Nawani,
Aged about 50 years,
Occupation-Household,
R/o. Nawani Niwas, Near Vitthal Mandir,
Nandura, Tah. Nandura, Dist. Buldhana.
- 4] Asha w/o Ramesh Talreja,
Aged about 65 years,
Occupation-Household,

R/o. Ashadeep Bungalow,
Plot No.18, Hanuman Nagar,
Bhusawal, Tah. Bhusawal,
Dist. Jalgaon Khandesh.

5] Kaushalya w/o Hargundas Tarwani,
Aged about 60 years,
Occupation-Household,
R/o. Hargundas Tarwani House,
Near Nayra Jewelers Rampuri Camp,
Amravati, Tah. and Dist. Amravati.

6] Maya w/o Ramdas Batheja,
Aged about 52 years,
Occupation-Household,
R/o. Mahalaxmi Sarees,
Shani Mandir Ward, Weekly Market,
Bhusawal, Tah. Bhusawal,
Dist. Jalgaon Khandesh.

7] Sarita @ Mahima w/o Gowardhandas
Ahuja, aged about 40 years,
Occupation-Household,
R/o. Flat No.301, Swami Apartment,
Near 24 C School, Ulhas Nagar-1,
Tah. Kalyan, Dist. Thane-421 001. ... Respondents
(Original Defendants)

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Shri N.B. Kalwaghe, Advocate for the petitioner,
Shri D.I. Jain, Advocate for the respondent nos.1 and 2.
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CORAM : N.B. SURYAWANSHI, J.

RESERVED ON : 12.07.2021.

PRONOUNCED ON : 18.08.2021.

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. By this petition, the original plaintiff no.2 in R.C.S. No.10/2020 challenges order below Exh.102 to the extent it denies proposed amendment in respect of subsequent events and his prayer for permanent injunction.

3. The facts shorn of unnecessary details are as follows :

The petitioner is original plaintiff and the respondents are the original defendants in Regular Civil Suit No.10/2020. The said suit was filed by plaintiff no.1 (father) and the petitioner (plaintiff no.2), seeking declaration that the plaintiff no.1 is exclusive owner of the suit property described in the plaint. Permanent injunction was sought against the defendant no.1 that he shall not transfer the suit property and or create any third party interest.

4. The defendant no.1 (respondent herein) and other defendants appeared and resisted the suit. During the pendency

of the suit, plaintiff no.1 expired on 4.12.2020. Since his legal representatives were already on record, his name was deleted and the suit proceeded. At the instance of plaintiff Court Commissioner was appointed and he submitted his report Exh.100 on record on 10.2.2021. On 18.2.2021, issues were framed by the trial Court.

5. The plaintiff thereafter on account of death of plaintiff no.1 and in the light of Court Commissioner's report, filed application Exh.102 seeking amendment in respect of contention about will of plaintiff no.1 and a declaration in terms of the will. Amendment was also sought in respect of the construction raised by the defendant no.1 in the suit property during the pendency of the suit and a prayer for permanent injunction for removal of the construction was sought to be added. The said amendment was opposed by the defendants. The trial Court allowed the amendment to the extent of contentions of the will and declaration in terms of the will, but rejected the amendment pertaining to the construction raised by the defendant no.1 in the suit property during the pendency of suit and prayer for removal of the same on the ground that if

the same is allowed, it would cause delay in the trial. The rejection of amendment is questioned in this petition.

6. Heard the learned Advocate for the petitioner-original plaintiff and the learned Advocate for the respondents-original defendants.

7. The learned advocate for the petitioner submitted that the trial Court has committed an error in rejecting the prayer for amendment ignoring the settled principle of law that before commencement of trial and with a view to avoid multiplicity of the proceedings, the amendment to bring on record subsequent events needs to be liberally allowed. In support of his contention, he relied upon the ratio in **Sampath Kumar .vs. Ayyakannu and another, (2002) 7 SCC 559** and **Rajesh Kumar Aggarwal and others .vs. K.K. Modi and others, (2006) 4 SCC 385**. He further submitted that the trial Court has erred in rejecting amendment on the ground of delay. According to him, the suit was directed to be expedited by this Court taking into consideration the fact that the plaintiff no.1 was 82 years old. Since the plaintiff no.1 is no more, now the direction to

expedite the suit has lost its significance to a greater extent and the trial Court could have sought extension of time to decide the suit in view of the amendment and the subsequent events. He pointed out the order passed by this Court on 23.2.2021 by which extension of further six months period was already granted to the trial Court to decide the suit. He, therefore, submitted that the impugned order is unsustainable and the amendment deserves to be allowed.

8. On the other hand, the learned Advocate for the respondents, supported the order of the Trial Court to the extent it rejected the amendment of the petitioner by contending that it is a separate cause of action for the petitioner to file a suit. He submitted that the respondent has only carried out repairs after seeking permission from the local authority, therefore, the Trial Court was justified in rejecting the amendment. The respondent no.1, by filing Writ Petition No.1739/2021, has challenged the order of allowing amendment of the petitioner in respect of will. According to him, it is a separate cause of action in which the petitioner ought to have brought another suit, he therefore, submitted that the Trial Court erred in partly

allowing the amendment application of the petitioner and the application ought to have been rejected by the Trial Court.

9. Admittedly, the trial has not commenced. The trial Court was right in allowing the amendment in respect of will and declaration in terms of will by a reasoned order. The cause of action about the rights in respect to the suit property have accrued to the parties on the basis of the will. The trial Court has rightly held that the will must take effect subsequent to the death of the original plaintiff no.1 and considering the dispute between the parties, the trial Court deemed it proper to permit the plaintiff to bring the entire case about the rights to the suit property in one composite suit. The trial Court was therefore justified in permitting the amendment in respect of the will. No fault can be found with the reasons assigned by the trial Court in allowing the said amendment.

10. The trial Court, however, erred in disallowing the amendment in respect of subsequent events which took place during the pendency of the suit. This amendment is erroneously disallowed on the ground that it would cause delay. The said

reason is irrational and unacceptable.

11. The suit property is the subject matter of the suit. The amendment does not alter the basic structure of the suit. The amendment was necessitated by the construction undertaken by the defendant no.1 during the pendency of the suit. The amendment ought to have been allowed and should have been considered along with amendment in respect of the will. The ground of delay in rejecting the amendment does not stand to reason. The impugned order of the trial Court is contrary to the settled legal position that subsequent events are required to be considered by the courts in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice.

12. The trial Court has passed the impugned order ignoring the settled legal position that to avoid multiplicity of suit, amendment should be more liberally allowed before commencement of trial. The trial Court has also ignored the fact on 23.6.2021, six months' extension is granted by this Court for disposal of the suit.

13. In **Sampath Kumar .vs. Ayyakannu and another** (supra), it is held :

5. *The short question arising for decision is whether it is permissible to convert through amendment a suit merely for permanent prohibitory injunction into a suit for declaration of title and recovery of possession.*

6. *It is true that the plaintiff on the averments made in the application for amendment proposes to introduce a cause of action which has arisen to the plaintiff during the pendency of the suit. According to the defendant the averments made in the application for amendment are factually incorrect and the defendant was not in possession of the property since before the institution of the suit itself.*

7. *In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the trial court, it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the trial court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.*

The above observations as well as the ratio in **Rajesh Kumar** (supra) supports the case of the plaintiff.

14. For the aforesaid reasons, the impugned order cannot be sustained and the same is liable to be quashed and set aside. Hence, the following order :

O R D E R

- (i) The writ petition is allowed.
 - (ii) The impugned order dated 5.3.2021 (Annexure-J) passed by the learned Civil Judge, Junior Division, Nandura to the extent it rejects application Exh.102 (Annexure-H) in Regular Civil Suit No.10/2020, is hereby quashed and set aside.
 - (iii) Application Exh.102 is allowed.
 - (iv) The petitioner shall carry out amendment within two weeks from the date of receipt of this order.
 - (v) The respondents to file amended written statement within two weeks thereafter.
- Rule is made absolute in the above terms.
There shall be no order as to costs.

(N.B. Suryawanshi, J.)