

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

**WRIT PETITION NO. 3121 OF 2021**

**PETITIONER:** Sanjaysingh Babasingh Chandel,  
aged about 52 years, Occ. Cultivator,  
R/o. Butibori, Tah. and Dist. Nagpur.

**...VERSUS...**

**RESPONDENTS:** 1. Heeradevi w/o Bhimkamsingh Parihar,  
(since deceased through L.Rs.)

1-a] Roshansingh Bhikamsingh Parihar,  
aged about 40 years, Occ. Private Job,

1-b] Smt. Kiran Gopalsingh Bhandaria,  
aged about 64 years, Occ. Household,

1-c] Chanda w/o Arvindsingh Rathod,  
aged about 59 years, Occ. Household,

1-d] Chhaya w/o Shriram Singh,  
aged about 50 years, Occ. Household.

1-e] Smt. Anupama w/o Navneetpratap Singh,  
aged about 42 years, Occ. Household,

All R/o. C/o. At present Roshansingh  
Rajput, Flat No. 304, Ganga Residency  
Shahu Nagar, Besa Road Manewada.

**AND**

**WRIT PETITION NO. 1157 OF 2019**

**PETITIONER:** Sanjaysingh Babasingh Chandel,  
aged about 50 years, Occ. Cultivator,  
R/o. Old Basti Butibori, Tah. and Dist. Nagpur.

**...VERSUS...****RESPONDENTS:**

1. Raghusingh Lalsingh Chandel  
(since deceased through L.Rs.)
  - 1-a] Kunjilal w/o Rajendrasingh Chauhan  
aged about 70 years, Occ. Household,  
R/o. Sarai Ward, Near Sapna Talkies,  
Chandrapur.
  - 1-b] Dilipsingh s/o Raghunath Chandel,  
aged about 63 years, Occ. Nil,  
R/o. Old Basti, Butibori, Tq. and Dist.  
Nagpur.
  - 1-c] Smt. Meena w/o Bhagwansingh Dixit,  
aged about 63 years, Occ. Household,  
R/o. Kurmi Mohalla, Bijlighar Ward,  
Seoni (M.P.)
  - 1-d] Smt. Savita w/o Yashwantsingh Chavan,  
aged about 62 years, Occ. Household.  
R/o. c/o Jhassu Mamu, at Bhaisdehi,  
Post. Bhaisdehi, Dist. Baitul (M.P)
  - 1-e] Pradipsingh Raghunath Chandel,  
aged about 60 years, Occ. Agriculturist,  
R/o. Old Basti, Butibori, Tq. and Dist.  
Nagpur.
  - 1-f] Smt. Nalini Satishkumar Nagarkar  
aged about 56 years, Occ. Household,  
R/o. At and Post Dharmach Ayodhya  
Society, Tah. Petlad, Dist. Anand (Gujrat)
  - 1-g] Kishor Raghunath Chandel,  
aged about 54 years, Occ. Agriculturist,  
R/o. Old Basti Butibori, Ward No.2,  
Tq. and Dist. Nagpur.

1-h] Smt. Sunita d/o Raghunath Chandel,  
aged about 48 years, Occ. Household,  
R/o. Purani Basti, Butibori, Tq. and Dist.  
Nagpur.

2. Jaswantsingh Lalsingh Chandel  
(since deceased through L.Rs.)

2-a] Smt. Lata wd/o Jaswantsingh Chandel,  
aged about 50 years, Occ. Household.

2-b] Treta Sanjay singh Bais  
R/o. Near Masjid Parseoni,  
Tah. Parseoni, Dist. Nagpur.

2-c] Pratiksha d/o Jaswantsingh Chandel,  
aged about 28 years, Occ. Household.

2-d] Ajay s/o Jaswantsingh Chandel,  
aged about 26 years, Occ. Cultivator.

2-e] Amit s/o Jaswantsingh Chandel,  
aged about 26 years, Occ. Cultivator,

Nos. 2-a to 2-e are R/o. Old Basti,  
Butibori, Tah. and Dist. Nagpur.

3. Heeradevi w/o Bhikamasingh Parihar,  
(since deceased through L.Rs.)

3-a] Roshansingh Bhikamsingh Parihar,  
aged about 40 years, Occ. Private Job,

3-b] Smt. Kiran Gopalsingh Bhandaria,  
aged about 64 years, Occ. Household,

3-c] Chanda w/o Arvindsingh Rathod,  
aged about 59 years, Occ. Household,

3-d] Chhaya w/o Shriram Singh,  
aged about 50 years, Occ. Household.

3-e] Smt. Anupama w/o Navneetpratap Singh,  
aged about 42 years, Occ. Household,

All R/o. C/o. At present Roshansingh  
Rajput, Flat No. 304, Ganga Residency  
Shahu Nagar, Besa Road Manewada,  
Nagpur-34.

4. State of Maharashtra, through Shri VD.  
Mundwaik, Talathi Revenue Circle (P.H.)  
No.76, Bori, Mouza Butibori, Tah. Nagpur  
Dist. Nagpur.

5. Circle Inspector (Revenue), Mouza Bori,  
P.S.Butibori, Tq. and Dist. Nagpur.

6. Nagar Parishad, Butibori, through its  
Chief Officer, Tq. and Dist. Nagpur.

7. Village Panchayat Bharkas, through its  
Secretary, Village Panchayat Bharkas,  
Tahsil Hingna, Dist. Nagpur.

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Shri N.S.Deshpande, Advocate for petitioner  
Shri P.K.Mishra, Advocate for respondent Nos. 1(a) to 1(e)  
Shri P.S.Sadavarte, Advocate for R-6 in WP 1157/2019

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**CORAM : AVINASH G. GHAROTE, J.**  
**DATE : 08/09/2021.**

1] Heard Mr. Deshpande, learned counsel for the  
petitioner, Mr. Mishra learned counsel for Respondent Nos. 1(a)  
to 1(e) in both the petitions and Mr. Sadavarte learned counsel for  
Respondent No.6 in W.P No.1157/2019.

2] Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.

3] In W.P. No. 3121 of 2021, a challenge is raised to the order dated 8.4.2021, passed below Exh. 453 in R.C.S. No. 1188/1986, (*Heeradevi and ors vrs. Bhagatsingh and ors*) by which the application for amendment of the plaint has been allowed by the learned trial Court. Regular Civil Suit No. 1188/1986 is a suit for partition of the immovable properties.

4] In W.P.No. 1157 of 2019, a challenge is raised to the order dated 4.1.2019 passed below Exh. 69 in R.C.S. No.439/2002 (*Raghusingh Lalchand Chandel vrs. State of Maharashtra and ors*), whereby the application for amendment has been allowed by the learned trial Court. Regular Civil Suit No. 439/2002 is a suit challenging the mutation done in respect of the properties which are the subject matter of R.C.S.No. 1188/86.

5] It is material to note that the parties to both the suits are common, except for the State of Maharashtra.

6] An application for amendment of the plaint came to be filed seeking to amend the plaint, by way of a declaration that the Will dated 8.3.1995, which was in favour of the present petitioner was illegal, null and void and did not confer any right whatsoever in favour of the petitioner to either represent or inherit by testamentary succession the share of the deceased defendant No.1/ Bharatsingh in the suit property. Appropriate amendments in the body of the plaint were also sought.

7] The application for amendment was opposed by contending that Bharatsingh Chandel/Org.Defendant No.1 had already expired in the year 2002 and on the basis of his Will dated 8.3.1995, the present petitioner was already brought on record in the year 2003 itself and therefore, the plaintiffs were fully aware of the existence of the Will dated 8.3.1995, since 2003 in spite of which no challenge was raised to the same at any point of time prior to the present application for amendments, which were filed in the year 2019 and therefore, the same was not permissible in law, the challenge having already been barred by limitation.

8]           The learned trial Court by the impugned orders though noted that the petitioner was brought on record as the legal representative on the basis of the application made by him and as per the order passed on Exh.44 therein, however, held that there was no pleading in respect of the said Will and therefore, accepting the contention as raised by the plaintiff that it was only since 2018 that the legal representative of the deceased defendant No.1 started asserting his right on the basis of the Will for mutation of his name that a cause of action arose for challenging the Will, allowed the amendment observing that as the petitioner/defendant no.1 would be at liberty to raise the issue of limitation by amending his pleadings, no prejudice would be caused to him.

9]           Mr. Nandesh Deshpande, learned counsel for the petitioner contends that the amendment ought not to have been allowed by the learned trial court, as the plaintiff was throughout aware of the Will dated 8.3.1995 and the right asserted by the petitioner on its basis. He has placed on record today, by way of a pursis, a copy of the application under Order 22, Rule 4 of C.P.C., dated 11.9.2003 at Exh. 247 in R.C.S No.1188/86, whereby the petitioner/deft.no.1 sought himself to be impleaded in place of the

deceased deft. no.1, on the basis of the registered Will dated 8.3.1995, whereby the share of the org.defendant No.1/Bharatsingh stood bequeathed to him.

10] This application for impleadment, dated 11.9.2003 was opposed by the plaintiff by filing his say on the said application. By an order dated 14.10.2003, the learned trial Court allowed the application of the petitioner/defendant No.1 by taking note of the pursis dated 8.9.2003 filed by the plaintiffs stating that they had no objection for joining the applicant Sanjaysingh Babasingh Chandel as party to the suit only for limited and restricted purpose for final argument of the suit, and observing that if the said applicant Sanjaysingh Chandel/petitioner was allowed to join the suit as a legal representative of deceased Bharatsingh Chandel in view of the registered Will dated 8.3.1995, no difficulty would be caused to the plaintiff, because by allowing him to join in the suit as a legal representative, the Court was not conferring any right of heirship to the estate of the deceased, and keeping the question as to the validity of the Will open as it ought to have been, allowed the application for impleadment.

11] He further invites my attention to the Written Statement of the legal representative of defendant No.1 in R.C.S No.1188/86 dated 7.12.2004, wherein a right was claimed by the said Sanjaysingh Chandel/petitioner in the share of late Bharatsingh/Org. Defendant No.1 on the basis of the Will dated 8.3.1995 executed in his favour.

12] Learned counsel Mr. Deshpande, therefore, submits that the plaintiff was throughout aware about the execution of the Will dated 8.3.1995 from 11.9.2003, the date of the application and the subsequent date of passing of the order thereon on 14.10.2003 and had not moved any application laying a challenge to the same till 2019, in spite of having specific knowledge about the same and therefore, the plea as raised in the application below Exh. 453 that the cause of action to raise a challenge to the Will dated 8.3.1995 arose in 2018 was clearly a false plea in view of which the application could not have been allowed.

13] Mr. Mishra learned counsel for the plaintiffs/respondents submit that though the petitioner was added as a legal representative of deceased Bharatsingh before the trial

court by virtue of the order dated 14.10.2003 passed below Exh. 249, the same was for a limited purpose as indicated by the court in its order, without determining the validity of the Will and therefore, there was no cause of action at that point of time for the plaintiffs to have laid challenge to the validity of the Will. He submitted that such a cause arose in 2018 for the reason that defendant No.1 started asserting his claim for mutation on the basis of the said Will which gave rise to a cause for the purpose of moving the said application. He places reliance upon *State of Mah vrs. Hindustan Construction Co. Ltd (2010) 4 SCC 518*; *Varun Pahwa vrs. Mrs. Renu Choudhary*, Civil Appeal No. 2431 of 2019, decided on 1.3.2019 by the Hon'ble Apex Court. He also places reliance upon the judgment of this Court in the case of *Babarao Pandurangji Patil and anr vrs. Sou. Kalavati Rambhauji Sathawane and others*, W.P. No. 1465 of 2017, decided on 4.2.2019, to contend that it is the nature and purpose of the amendment which is to be considered, the issue of amendment is a matter of procedure and amendment as a matter of rule has to be liberally construed. He, therefore, submits that no fault can be found with the orders as passed by the learned trial Court and the petition be dismissed.

14] In ***Hindustan Construction Co. Ltd.*** (supra) while considering the question of amendment, it has been held thus -

*"16. Pleadings and particulars are required to enable the court to decide true rights of the parties in trial. Amendment in the pleadings is a matter of procedure. Grant or refusal thereof is in the discretion of the court. But like any other discretion, such discretion has to be exercised consistent with settled legal principles. In [Ganesh Trading Co. v. Moji Ram](#), this Court stated :*

*"2. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleading in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take."*

*17. Insofar as Code of Civil Procedure, 1908 (for short 'CPC') is concerned, Order VI Rule 17 provides for amendment of pleadings. It says that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.*

*18. The matters relating to amendment of pleadings have come up for consideration before courts from time to time. As far back as in 1884 in [Clarapede & Company v. Commercial Union Association](#) - an appeal*

*that came up before Court of Appeal, Brett M.R. stated :*

*".....The rule of conduct of the court in such a case is that, however negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs; but, if the amendment will put them into such a position that they must be injured, it ought not to be made....."*

*19. In Charan Das and Others v. Amir Khan and Others, the Privy Council expounded the legal position that although power of a Court to amend the plaint in a suit should not as a rule be exercised where the effect is to take away from the defendant a legal right which has accrued to him by lapse of time, yet there are cases in which that consideration is outweighed by the special circumstances of the case.*

*20. A four-Judge Bench of this Court in [L.J. Leach and Company Ltd., v. Jardine Skinner and Co.](#) while dealing with the prayer for amendment of the plaint made before this Court whereby plaintiff sought to raise, in the alternative, a claim for damages for breach of contract for non-delivery of the goods relied upon the decision of Privy Council in Charan Das & Others granted leave at that stage and held :*

*"16. It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken*

*into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice."*

In **Varun Pahwa** (supra), while considering the application of amendment, the court has also considered the earlier pronouncements in **Charan Das vrs. Amir Khan, 47 IA 255; Jai Jai Ram Manohar Lal, (1969) 1 SCC 859 and Uday Shankar Triyar vrs. Ram kalewar Prasad Singh and anr, (2006) 1 SCC 75**, to hold that in case there was any inadvertant mistake in the plaint, the same could be allowed to be corrected so as to permit a Private Limited Company to sue as the plaintiff, as the original plaintiff had filed the suit as a Director of the said Private Limited Company.

15] In **Babarao Pandurangji Patil**, this Court had upheld the order allowing the amendment of the plaint which was so filed after the written statement of the defendant. The basic principles as laid down in **Abdul Rehman vrs. Mohd. Ruldu, (2012) 11 SCC 341** and **Rewajeetu Builders and Developers vrs. Narayanaswami and Sons and others, (2009) 10 SCC 84**, were considered.

16] It is a settled position of law that while considering an application for amendment, it has to be considered whether the amendment sought is imperative for proper and effective adjudication of the case; whether it was bonafide or malafide; whether it caused such prejudice as could not be compensated adequately in terms of money; whether it would lead to injustice or multiple litigation; whether it would constitutionally or fundamentally change the nature and character of the case; as a general rule amendments should be declined if a fresh suit on the amended claim would be barred by limitation on the date of the application.

17] Though learned counsel Mr. Mishra contends that the cause of action for filing the amendment which laid a challenge to the Will dated 8.3.1995, arose in 2018, when the petitioner is claimed to have pressed his suit for mutation on the basis of the Will dated 8.3.1995, the knowledge about the execution of the Will and the right claimed by defendant No.1/petitioner was with the plaintiff, since 11.9.2003, the date on which an application was made by the petitioner to implead him as a party defendant in place

of the deceased defendant No.1 in R.C.S. No.1188/1986. In fact the impleadment of the petitioner was conceded to by filing the pursis dated 8.9.2003, may be for a limited purpose, that however, did not mean that the right to lay a challenge to the legality and validity of the said Will, in case the same was sought to be laid, stood postponed to a future period of time. It is a settled position of law that the limitation once started, runs continuously. Thus, when the petitioner laid a claim to be added in place of the deceased defendant No.1 on the basis of the Will dated 8.3.1995, the cause of action to raise any challenge to the validity of the Will clearly started to run from the date of the application dated 11.9.2003 and was continuous. An application therefore to lay a challenge to the said Will filed on 10.12.1019 in R.C.S. No. 1188/86 and in R.C.S No. 439/2000, was clearly barred by limitation, which position has been totally ignored by the learned trial Court. That apart, the Will dated 8.3.1995, merely bequeathed the right in the share of the deceased defendant No.1/Bharatsingh in the suit property, which was yet to be determined.

18] That being the situation, I finds that the impugned orders dated 8.4.2021, passed in R.C.S No.1188/86 below Exh. 453

and 4.1.2019, passed in R.C.S. No.439/2002 below Exh. 69, are clearly not sustainable in law and therefore, are quashed and set aside, resultantlly the applications for amendments as indicated above are also dismissed. The writ petitions are allowed in above terms. No costs.

**JUDGE**

Rvjalit