

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 804 OF 2019

PETITIONERS :-
(Ori.Plaintiffs)

1. Sonabai Shantaram Bunde, aged 45 years
Occupaton agriculture, resident of Mothi
Sakli, Tahsil and District Buldana.
2. Samadhan s/o Totaram Bahadare, aged
50 years, occupation agriculture, resident
of Pimpalgaon (Kale), Tahsil Jalgaon
Jamod, District Buldana.

...VERSUS...

RESPONDENTS :-
(Ori. Respondents)

1. Ramesh @ Rameshwar Namdeo
Washimkar, aged 60 years, occupation
agriculture.
2. Dinkar s/o Ramesh Washimkar
(Mahajan), age 37 years, occupation
agriculture,
3. Vitthal s/o Ramesh Washimkar
(Mahajan), aged 35 years, occupation
agriculture,
4. Rameshwar Shankar Mahajan, aged 51
years, occupation agriculture,
5. Manisha Dinkar Washimkar (Mahajan),
aged 34 years, occupation household and
agriculture,

Nos.1 to 5 resident of Antri, Tahsil Motala, District Buldana.

6. Vasanta Totaram Bahadare, aged 45 years, occupation agriculture,
7. Pralhad s/o Toatram Bahadare, aged 40 years, occupation agriculture,
8. Sumanbai Pandurang Sananase, aged 55 years, occupation agriculture,
9. Panchfula Gajanan Haramkar, aged 35 years, occupation agriculture,

Nos.6 to 9 resident of Pimpalgaon (Kale), Tahsil Jalgaon Jamod, District Buldana.

Mr. S.S.Deshpande, counsel for the petitioners.
Mr.Vivek Awchat, counsel for respondent Nos.1 to 3 & 5.
Mr. V. Vishwarupe, counsel for respondent No.4.

CORAM : MANISH PITALE, J.

DATE : 22.06.2021

ORAL JUDGMENT

1. Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard the learned counsel for the rival parties.

3. **Rule.** Rule made returnable forthwith. The writ petition is heard finally with the consent of the learned counsel for the parties.

4. The petitioners herein are aggrieved by an order dated 26/09/2018 passed by the Court of Civil Judge, Junior Division, Motala, whereby application filed by the petitioners (original plaintiffs) under Order VI Rule 17 of the Code of Civil Procedure (CPC) for amendment of the plaint, has been rejected.

5. In the present case, the petitioners have filed a suit in the year 2016 for declaration and possession as also damages against the respondents (original defendants). Issues were framed on 04/07/2017 by the Court below and thereafter on 13/06/2018, the petitioners moved the said application for amendment at Exhibit-21. It was claimed in the said application that the proposed amendment was clarificatory in nature and that it did not change the nature of the suit in any manner. It was

submitted that the application deserved to be allowed in the interest of justice. The said application was opposed by the respondents.

6. By the impugned order, the Court below has held that the application does not deserve to be allowed for the reason that the petitioners failed to demonstrate as to why they could not state in the plaint what they desired to place on record by way of the proposed amendment. This was found to be hit by the relevant provision of the CPC.

7. Mr. S.S. Deshpande, learned counsel appearing for the petitioners, submitted that the Court below has erred in passing the impugned order, inasmuch as the petitioners did satisfy the requirements of Order VI Rule 17 of the CPC for the reason that the proposed amendment was necessary for determining the real question in controversy between the parties, that no prejudice would be caused to the respondents since the amendment was clarificatory in nature and that the nature of the suit would not change in any manner if the amendment was allowed. It was further submitted that although issues were framed on

04/07/2017, recording of evidence was yet to commence when the application for amendment was moved on behalf of the petitioners.

8. The learned counsel for the petitioners placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Gurbaksh Singh and others v. Buta Singh and another**, reported in **2019 (1) Mh.L.J. 481**, in support of his contentions.

9. On the other hand, Mr.Awchat, learned counsel appearing for the respondent Nos.1 to 3 and 5, submitted that the application for amendment filed on behalf of the petitioners was belated in the sense that the issues were framed as far back as on 04/07/2017 and the said application was moved after about a year before the Court below. It was further submitted that the petitioners had failed to demonstrate as to why they could not have placed the facts that they desired to place on record by way of the proposed amendment, despite exercising due diligence in the matter. On this basis, it was submitted that the application was hit by proviso to Order VI Rule 17 of the CPC and that the Court below was clearly justified in passing the impugned order.

It was further submitted that the petitioners were seeking to plug the loopholes in their pleadings and that this could not be permitted by the Court below.

10. Mr. V. Vishwarupe, learned counsel appearing for the respondent No.4, submitted that the impugned order did not deserve to be interfered with because it was in consonance with the law pertaining to Order VI Rule 17 of the CPC. Reliance was placed on judgment of the Hon'ble Supreme Court in the case of **Revajeetu Builders and Developers v. Narayanaswamy and Sons and others**, reported in (2009) 10 SCC 84, particularly paragraph-63 thereof, which lays down the conditions in which an application for amendment can be granted. It was submitted that the said conditions were not satisfied by the petitioners herein and that therefore, the writ petition deserved to be dismissed.

11. Heard the learned counsel for rival the parties and perused the material on record. Order VI Rule 17 of the CPC deals with the aspect of amendment of pleadings before the Trial Court in original proceedings. The aforesaid provision specifies that amendments can be granted where such amendments help the

Court in determining the real question in controversy between the parties. Proviso to the said provision specifically states that the amendment application shall not be allowed once the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, a party seeking amendment could not have raised the matter before commencement of trial. In the present case, it is an admitted position that the issues were framed on 04/07/2017 and that when the application for amendment was moved on 13/06/2018, evidence was yet to commence. In that sense, although the application for amendment was indeed moved after about one year after framing of issues, evidence was yet to be recorded in the matter. Strictly speaking, the application filed by the petitioners was not hit by proviso to Order VI Rule 17 of the CPC.

12. Perusal of the plaint shows that in paragraph-11 thereof, the petitioners have stated that the defendants i.e. the respondents herein had acted to the prejudice of the petitioners on the basis of false documents, which the petitioners came to know in October, 2013. Perusal of the proposed amendment shows that the petitioners wish to place on record details as to when they

became aware about the said alleged false and fabricated documents and that the defendants (respondents) had allegedly, illegally taken possession of the part of the suit property. Since the suit filed by the petitioners is for declaration, possession and damages, the aspects sought to be brought on record by way of amendment appear to be an attempt to elaborate what was already stated in paragraph-11 of the plaint, thereby indicating that the proposed amendment was essentially clarificatory in nature. It cannot be said that if the proposed amendment is permitted to be carried out, the nature of the suit would change in any manner or that it would cause prejudice to the respondents. This Court is unable to appreciate the contention raised on behalf of the respondents that nature of the suit would stand altered or that the petitioners were making an attempt to cover certain shortcomings in their pleadings. The learned counsel for the petitioners is justified in relying upon the judgment of the Hon'ble Supreme Court in the case of **Gurbaksh Singh and others v. Buta Singh and another** (*supra*), wherein amendment of plaint was allowed even after the trial had commenced, since the Court found that the amendment was essentially clarificatory in nature and in that context, the aspect of due diligence paled into

insignificance. Insofar as the judgment of the Hon'ble Supreme Court in the case of **Revajeetu Builders and Developers v. Narayanaswamy and Sons and others** (*supra*) is concerned, applying the very guidelines laid down in the said judgment, this Court is of the opinion that the Court below erred in rejecting the application for amendment.

13. In view of the above, the writ petition is allowed. The impugned order is quashed and set aside. The application for amendment at Exhibit-21 filed by the petitioners is allowed. The petitioners shall carry out the amendment within a period of four weeks from today and the Court below shall proceed to dispose of the suit as expeditiously as possible.

14. Rule made absolute in above terms. No order as to costs.

JUDGE