

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

WRIT PETITION NO. 6596 OF 2018

1. Aminabi Sallauddin Shaikh
Since died through L.R.S
- 1a) Rafique Salauddin Shaikh,
Age : 55 Years, Occu. : Taxi Driver,
R/o Sayyad Adam Chawl,
Room No. 9, Shrikant Palekar
Road, Near Baba Kabrastan,
Chirabazar, Mumbai, Maharashtra.
- 1b) Shafi Sallauddin Shaikh,
Age : 48 Yers, Occ – Service,
R/o Mohd Nabi Chawl, Room No. 35,
Hariyana Wala Lane, Station Road,
Kurla West, Mumbai, Maharashtra.
- 1c) Gulabano Firoz Sayyed,
Age : 45 Years, Occu. : Household,
R/o Mohd Nabi Chawl, Room No. 16,
Hariyana Wala Lane, Station Road,
Kurla West, Mumbai, Maharashtra.
- 1d) Ayub Salauddin Shaikh,
Age : 44 Years, Occu. : Taxi Driver,
R/o Sayyad Adam Chawl,
Room No. 10, Shrikant Palekar
Road, Near Baba Kabrastan,
Chirabazar, Mumbai, Maharashtra.
- 1e) Salim Salauddin Shaikh
Died through L.R.S
- E1) Hamid Salim Shaikh,
Age : 28 Years, Occu. : Taxi Driver,
R/o Shrikant Palekar Road,
Building No. 51, Chirabazar,
Gupta Chikki Bhandar,
Mumbai, Maharashtra.

E2) Jarina Salim Shaikh,
Age : 26 Years, Occu. : Household,
R/o Shrikant Palekar Road,
Building No. 51, Chirabazar,
Gupta Chikki Bhandar,
Mumbai, Maharashtra.

E3) Rukayya Salim Shaikh,
Age : 24 Years, Occu. : Household,
R/o Wadala, Mumbai, Maharashtra.

.. Petitioners

Versus

- 1) Janabi Babulal Inamdar,
Since deceased through L.Rs.
- 1A. Ahmed Babulal Inamdar,
Age – 60 Years, Occu. : Agril.
- 1B Isaklall Babulal Inamdar,
Age – 58 Years, Occu. : Agril.,
- 1C. Amina Inayat Patel,
Age – 55 Years, Occu. : Agril.,
- 1A to 1C R/o Undirgaon,
Tal. Shrirampur, Dist. Aurangabad.
- 1D. Ibiba Farukh Shaikh,
Age – 52 Years, Occu. : Agril.,
R/o Ramgad, Yenatpur,
Tal. Shrirampur, Dist. Ahmednagar.
- 2) Jubedabi Nasarat Sayyed,
Age – 71 Years, Occu. : Household,
C/o R/o Jafar Nasartali Sayyed,
Sajidnagar, Near Anjuman High
School, Near Station, Aurangabad,
Dist. Aurangabad.
- 3) Jamil Taherali Sayyed,
Age – 60 Years, Occu. - Driver,

- 4) Irshad Taherali Sayyed,
Age – 58 Years, Occu. - Agriculture,
- 5) Farukh Taherali Sayyed,
Age – 57 Years, Occu. - Agriculture
and Transport,
- 6) Ayyaj Taherali Sayyed,
Age – 55 Years, Occu. - Service,
- 7) Gayas Taherali Sayyed,
Age – 52 Years, Occu. - Agriculture
and Transport,
- 8) Anwar Taherali Sayyed,
Age – 50 Years, Occu. - Agriculture
and Transport,

Resp. 3 to 8 R/o Front of Nurani
Majjid, Ramgad, Yenatpur,
Tal. Shrirampur, Dist. Ahmednagar.

- 9) Bashira Arefali Sayyed,
Age – 56 Years, Occu. : Household
and Agril.,
C/o Jubeda Nusrat Sayyed,
At R/o Ranjangaon Pol,
Tal Gangapur, Dist. Aurangabad. .. Respondents

Ms. Suvarna Zaware, Advocate for the Petitioners.
Shri L. B. Pallod, Advocate for the Respondent No. 6.
Respondent Nos. 3 to 6 and 8, 9 are served.

CORAM : SANDEEP V. MARNE, J.
DATE : 30TH NOVEMBER, 2022.

ORAL JUDGMENT :

. Rule. Rule made returnable forthwith. With the consent
of parties taken up for final hearing.

2. By this petition, the petitioner challenges order dated 17th

April, 2018 passed by the 05th Joint Civil Judge Junior Division, Shrirampur rejecting application for amendment of plaint at Exhibit 69 in R.C.S. No. 263 of 2013.

3. Though there are numerous respondents in the present petition, many of the respondents are unserved. The main contesting respondent is respondent No. 6 who is represented by Mr. Pallod. Therefore, I proceed to hear the petition, rather than waiting for service of notices in petition on non-contesting Respondents.

4. Plaintiff has filed the suit *inter alia* for cancellation of the sale deed dated 11.09.2003 in respect of land gut No. 76 allegedly executed by the plaintiff in favour of the defendant No. 6. While the suit for cancellation of sale deed is restricted only in respect of land bearing gut No. 76, in respect of prayer for partition and injunction, the plaintiff included both the lands bearing gut Nos. 76 and 77 in the description of the suit property. Defendant No. 6 appeared in the suit and filed his written statement making a statement in para No. 12 thereof that he purchased both the properties described in para No. 1A and 1B of the plaint. In para No. 1B of the plaint, land bearing gut No. 77 is included. Thus, the defendant No. 6 appears to have given clear knowledge about purchase of gut No. 77 in the written statement itself.

5. Later, when the Trial in the suit commenced, the defendant No. 6 filed his affidavit of evidence on 30.08.2017, in which he made a categorical statement in para No. 15 thereof that by sale deed dated 11.09.2003, he purchased the land admeasuring 22R out of gut No. 77 for consideration of Rs.

86,000/-. Thus while a hint was given in the written statement about purchase of land at gut No. 77, details of the transactions came to be disclosed in the affidavit of evidence dated 30.08.2017.

6. Claiming that the knowledge of execution of sale deed in respect of land gut No. 77 was acquired by the plaintiff for the first time on filing of affidavit of evidence by the defendant No. 6 on 30.08.2017, the she moved an application for amendment of the plaint on 04.01.2018 seeking incorporation of challenge to the sale deed in respect of gut No. 77 as well. The application was resisted by the defendant No. 6. The Trial Court has proceeded to reject the application holding that the name of the defendant No. 6 was reflected on the 7/12 extract of gut No. 77 before filing of the suit and that additionally by filing written statement, the defendant No. 6 made it known to the plaintiff that the land at gut No. 77 was also purchased. The Trial Court has therefore accused the petitioner/plaintiff for not showing due diligence and has proceeded to reject the application.

7. Appearing for the petitioner, Ms. Zaware, the learned counsel would submit that the plaintiff/petitioner is an illiterate old lady and did not properly appreciate the contents of the written statement wherein specific gut number was not stated. She would submit that on a mere statement of purchase of land at para No. 1A and 1B did not give a clear and specific idea of transaction of alleged sale deed dated 11.09.2003 in respect of land gut No. 77. She would submit that the exact knowledge of the sale deed dated 11.09.2003 in respect of land gut No. 77 was acquired by the plaintiff only after filing of affidavit of evidence by the defendant No. 6 on 30.08.2017. She would therefore

submit that the petitioner/plaintiff was diligent enough in moving an application for amendment immediately after acquisition of such knowledge. Ms. Zaware would further submit that allowing the amendment would result in saving multiplicity of proceedings as plaintiff/petitioner would be required to institute one more suit for challenging the transactions in respect of property at land gut No. 77 if the amendment is disallowed. She relies upon the judgment of the Supreme Court in a case of **Abdul Rehman and another Vs. Mohd. Ruldu and others** reported in ***2012 AIR SCW 5419*** and in a case of **Mount Mary Enterprises Vs. Jivratna Medi Treat Pvt. Ltd.** reported in ***2015(5) Mh.L.J. 214.***

8. Per contra, Mr. Pallod, the learned counsel appearing for the respondent No. 6 would oppose the petition and support the order passed by the Trial Court. Inviting my attention to para No. 12 of the written statement and para No. 1 of the plaint, Mr. Pallod would contend that the knowledge of purchase of property bearing land gut No. 77 was specifically given to the plaintiff in the written statement itself. Additionally, the plaintiff had the knowledge of mutation of name of the defendant No. 6 in the revenue records. He would therefore submit that even if the period of limitation for setting up challenge to the sale deed dated 11.09.2003 is to be computed from the date of acquisition of knowledge, the amended prayer sought to be raised by the petitioner would otherwise be barred by limitation. He would therefore contend that the Trial Court has rightly rejected the application for amendment. Mr. Pallod has also submitted that the application filed by the plaintiff/petitioner itself was not maintainable as same was not signed or verified by her. That

though this contention is specifically highlighted in the reply opposing amendment, Trial Court has ignored the same. He would therefore urge before me to consider that conduct of Petitioner to deny her any relief in writ jurisdiction. Mr. Pallod would rely upon judgment of this Court in a case of **The Liquidator, The Maratha Market People's Co-operative Bank Ltd. Vs. M/s Jeejaee Estate and others** reported in **2019(1) All MR 884** in support of his contention that the trial has commenced and, therefore, application for amendment could not have been allowed.

9. Very recently the Apex Court has summarized the principles relating to amendment of pleadings in **Life Insurance Corporation of India Vs. Sanjeev Builders Pvt Ltd.** reported in **2022 SCC OnLine SC 1128** as under:

70. *Our final conclusions may be summed up thus:*

- (i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.*
- (ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.*
- (iii) The prayer for amendment is to be allowed*
 - (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and*
 - (ii) to avoid multiplicity of proceedings, provided*
 - (a) the amendment does not result in injustice to the other side,*

- (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*
 - (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*
- (iv) A prayer for amendment is generally required to be allowed unless*
 - (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
 - (ii) the amendment changes the nature of the suit,*
 - (iii) the prayer for amendment is malafide, or*
 - (iv) by the amendment, the other side loses a valid defence.*
- (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*
- (vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*
- (vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*
- (viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*
- (ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*
- (x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which*

are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897)

10. Keeping the above broad principles in mind, I proceed to consider whether the amendment sought to be introduced by the Petitioner/plaintiff could have been allowed by the Trial Court.

11. After hearing learned counsel appearing for the parties, it appears that the plaintiff and the defendant No. 6 are relatives. Plaintiff is maternal aunt as well as mother-in-law of the defendant No. 6. She has alleged that the defendant No. 6 has taken undue advantage of her old age and got sale deed in respect of lands executed in his name. While filing the suit she sought partition in respect of various lands including land at gut Nos. 76 and 77, however, the prayer for cancellation of the sale deed dated 11.09.2003 was restricted only in respect of land at gut No. 76. It appears that the sale deed in respect of land at gut No. 77 is also executed on the same date i. e. on 11.09.2003. If the she was aware about execution of the sale deed dated 11.09.2003 in respect of land gut No. 77 as well, ordinarily there was no reason for her to omit that sale deed from prayer clause A

in the suit.

12. Now it is required to be examined as to when plaintiff/petitioner acquired knowledge about the execution of sale deed dated 11.09.2003 in respect of land gut No. 77. True it is that the defendant No. 6 did give some idea to her at the time of filing written statement that he has purchased land at gut No. 77 as well. However, details of the transaction were not stated in the written statement. Later, in the affidavit of evidence dated 30.08.2017 filed by him, he disclosed sale deed, area of land purchased, the gut number of land as well as amount of consideration. Plaintiff claims that she acquired knowledge about the transaction only on 30th August, 2017.

13. True it is that after specific statement in the written statement of the defendant No. 6 about purchase of land described in para 1B of the plaint, the petitioner could have made enquiries and found out details of the transaction. However, since the contents of para No. 12 of the written statement are not specific, no concrete inference can be drawn at this stage as to whether she acquired knowledge of execution of sale deed dated 11.06.2003 upon filing of written statement or not. I do not wish to record any finding on the exact date of acquisition of knowledge of the sale deed dated 11.09.2003 in respect of land gut No. 77, as the such a finding would touch upon the issue of limitation while considering the amended prayer for cancellation of that sale deed.

14. Considering the fact that the plaintiff/petitioner is an illiterate old lady, coupled with the fact that no details of the

transactions in respect of land gut No. 77 were disclosed in the written statement, it cannot be concluded as of now that the amended prayer seeking cancellation of sale deed dated 11.09.2003 in respect of land gut No. 77 would be barred by limitation. This issue would be determined by the Trial Court at the time of final decision of the suit. For the purpose of considering the issue of amendment there is no necessity of recording any finding in this regard.

15. However, prayer for incorporation of amendment with regard to transaction in respect of land gut No. 77 would save multiplicity of litigation. The pleadings and evidence for setting up challenge to the sale deed in respect of properties at gut Nos. 76 and 77 would be same and no purpose would be served in making the plaintiff/petitioner to file separate suit to challenge similar transaction in respect of land gut No. 77. In that view of the matter, it appears that the proposed amendment would not change the nature of suit. I may refer to the judgment of Supreme Court here in **Abdul Rehman** (supra) relied upon by Ms. Zaware, in which it is held as under:

“15) We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.”

16. In **Mount Mary Enterprises** (supra), it is held by the Apex Court thus:

“7. In our opinion, as per the provisions of Order 6 Rule 17 of the Civil Procedure Code, the amendment application should be

normally granted unless by virtue of the amendment nature of the suit is changed or some prejudice is caused to the defendant. In the instant case, the nature of the suit was not to be changed by virtue of granting the amendment application because the suit was for specific performance and initially the property had been valued at Rs.13,50,000/- but as the market value of the property was actually Rs.1,20,00,000/-, the appellant-plaintiff had submitted an application for amendment so as to give the correct value of the suit property in the plaint."

17. What remains now is to determine due diligence of the plaintiff/petitioner in moving application for amendment. As held hereinabove the exact details of the transaction of the sale deed dated 11.09.2003 were disclosed by the defendant No. 6 in the affidavit of evidence dated 30.08.2017 and she moved application for amendment immediately thereafter on 04.01.2018. Though she could have been more diligent in incorporating necessary prayers in the plaint especially after noticing name of the defendant No. 6 in the revenue records, it would not be in the interest of justice to shut the doors of the Courts on her in respect of challenge to the sale deed in respect of land gut No. 77. In the event she is successful in satisfying the trial Court on the issue of limitation, amendment would save her from instituting another suit raising same pleadings and leading same evidence. Amendments avoiding multiplicity of proceedings are required to be allowed as reiterated by the Apex Court in **Life Insurance Corporation of India Vs. Sanjeev Builders Pvt Ltd.** (*supra*)

18. The submission of Mr. Pallod that amendment application was not signed or verified by the plaintiff/petitioner is of no avail, as the Trial Court has not rejected the application on that ground. Even otherwise Ms. Zaware has seriously disputed said

contention stating that the signature was that of her power of attorney. Since the impugned order does not turn on this aspect, I would like to steer clear out of this controversy.

19. The reliance of Mr. Pallod on the decision of this Court in a case of **The Liquidator, The Maratha Market People's Co-operative Bank Ltd.** (supra) is of no avail as that judgment essentially is on the issue as to when the trial commences. In the present case, there is no doubt that the trial had commenced when the application for amendment was moved. However Petitioner can be said to be diligent as all the details of the transaction were made known to her for the first time on 30.08.2017.

20. Therefore, I am of the view that the Trial Court ought to have allowed application filed by the petitioner/plaintiff for amendment of the plaint in order to enable her to set up a challenge to the sale deed dated 11.09.2003 in respect of land gut No. 77 as well. However, for the delayed filing of application for amendment after commencement of trial, thereby resulting in delaying the same, the contesting Respondent is required to be compensated with costs.

21. Accordingly, the petition succeeds. The order dated 17.04.2018 passed by the 05th Joint Civil Judge Junior Division, Shrirampur on application at Exhibit 69 in R. C. S. No. 263 of 2013 is set aside. The plaintiff's application for amendment at Exhibit 69 stands allowed in terms of prayers made therein. The defendant No. 6 would be at liberty to file additional written statement and evidence. The plaintiff/petitioner to pay cost of Rs.

10,000/- (Rs. Ten thousands only) to the defendant No. 6 within a period of four (04) weeks from today. Costs to be deposited in the Trial Court with liberty to the defendant No. 6 to withdraw the same. Needless to state, failure on the part of the petitioner/plaintiff to deposit the cost in the trial Court would result in dismissal of the petition and revival of order dated 17.04.2018. Since the suit is of the year 2016, the Trial Court shall make an endeavour to decide the same as expeditiously as possible and preferably within a period of one (01) year from today.

22. Rule is made absolute in above terms.

[SANDEEP V. MARNE, J.]

bsb/Nov. 22