

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

WRIT PETITION NO.10133 OF 2015

**ARVIND KASHINATH GAJESHWAR
VERSUS
SUBHASH @ SUBHASHCHANDRA RAMCHANDRA WANI
AND OTHERS**

**WITH
WRIT PETITION NO.10199 OF 2015**

**ARVIND KASHINATH GAJESHWAR
VERSUS
SATISH @ SATISHCHANDRA RAMCHANDRA WANI AND
OTHERS**

...

Mr. S. P. Brahme, Advocate for the Petitioner.
Mr. R. R. Sancheti, Advocate for Respondent Nos.1, 1A and 1B.
Mr. Anand Bhandari, Advocate for Respondent No.2.
Mr. A. N. Sabnis, Advocate for Respondent Nos.9 to 11.
Mr. M. M. Bhokarikar, Advocate for Respondent Nos.12-B.

...

**CORAM : SANDEEP V. MARNE, J.
DATED : 16th DECEMBER, 2022.**

PER COURT:-

1. These petitions are filed challenging the orders dated 14.07.2015 passed by the Joint Civil Judge, Senior Division, Bhusawal rejecting plaintiff's application for amendment filed under the provisions of Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short 'the Code of 1908').

2. Before advertng to the facts of the present case it would be necessary to refer to the recent judgment of the Supreme Court in **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr.**, AIR 2022 SC 4256, wherein the Apex Court has summarized the principles relating to the

amendment of pleadings in paragraph no.70 of the judgment which reads thus:

“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 negated.

(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 pinpointedly 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 & Ors., 2022 SCC OnLine Del 1897)”

3. Thus the Apex Court has held that before commencement of the trial, the Courts would be liberal in allowing the applications for amendment to the extent the amendments do not change the very nature of the suit. In the present case, at the time when the amendment applications were filed admittedly the trial in the suit was yet to commence. Therefore, only issue that needs consideration in the present

petitions is whether the amendment would change the nature of the suit.

4. Plaintiff has filed suit challenging the sale deed dated 17.11.2011 executed by defendant no.1 in favour of defendant no.2 and have also sought the relief of pre-emption. Plaintiff and defendant no.1 are family members and plaintiff is claiming right in the suit property comprising land admeasuring 3039 sq. meter. Even though the entire land admeasuring 16,256 sq. meter is also described in one paragraph of the plaint, it is specifically clarified that the suit was restricted only to the sale deed dated 17.11.2011 in respect of land admeasuring 3039 sq. meter.

5. Defendant no.1 filed written statement on 15.10.2012 and *inter alia* contended that plaintiff did not seek relief for partition and that on that count, the suit deserves to be dismissed. After raising of such objection by defendant no.1 plaintiff filed application for amendment of the plaint on 28.08.2013 seeking to introduce various amendments to the plaint including relief for partition of the entire property admeasuring 16,256 sq. meters. The Trial Court has turned down the application for amendment by order dated 14.07.2015.

6. Appearing for petitioner Mr. Brahme, the learned counsel would submit that some part of amendment was necessitated on account of a occurrence of subsequent events in the form of demolition of construction on the suit property after filing of the suit. He would further submit that relief of partition was required to be added as suit was contested by defendant no.1 raising an objection of non-claiming of relief of partition. He would further submit that few additional averments relating to

some portion of property's acquisition as well as correct description of the property were also sought to be introduced. Mr. Brahme would contend that considering the overall nature of amendment, it cannot be stated that the amendment was changing the nature of the suit. The trial having not commenced, the Trial Court ought to have allowed the application for amendment.

7. Per contra Mr. Bhandari, learned counsel appearing for respondent no.2 would oppose the petition and support the order passed by the Trial Court. He would submit that the amendment sought to be introduced in the plaint is longer in length than the plaint itself. Apart from the length of the amendment, Mr. Bhandari would contend that the suit property is also sought to be modified in that the original suit was restricted only in respect of the sale deed for land admeasuring 3039 sq. meters whereas now plaintiff has sought to expand the ambit of the suit to the entire property admeasuring 16,256 sq. meters. Mr. Bhandari would further submit that since the original relief was restricted to the challenge to the sale deed as right of preemption, new relief of partition in the suit property would change the nature of the suit. Mr. Bhandari would also contend that the maintainability of the suit against Municipal Council Raver, which is sought to be added by way of amendment, is also highly debatable.

8. Mr. Sabnis and Mr. Sancheti, learned counsel adopted the submissions of Mr. Bhandari.

9. Mr. Bhokarikar, learned counsel appearing on behalf of respondent no.12-B fairly concedes that the amendment would not change the nature of the suit.

10. Having heard the learned counsel for the parties and bear in mind the broad principles expounded by the Apex Court in its judgment in **Life Insurance Corporation of India** (supra), it is necessary to determine whether the proposed amendment would change the nature of the suit. Though various amendments are sought to be introduced, the main amendment is relating to the relief of partition. This amended prayer not only changes the nature of relief but also widens the ambit of the property in respect of which the suit was initially filed. Plaintiff and several other defendants are family members and it is an assertion of plaintiff that entire property admeasuring 16,256 sq. meters is a joint family property. The prior right of purchase, in respect of the property admeasuring 3039 sq. meters is also premised on contention that the entire property is a joint family property. In the light of this position, ideally while challenging the sale deed dated 17.11.2011, plaintiff ought to have sought partition of the entire property admeasuring 16,256 sq. meters. However, for the reasons best known to him, plaintiff restricted the original suit only to the right of preemption. After an objection was raised by defendant no.1, and in my opinion rightly so, about absence of relief of partition, the maintainability of the suit itself would become questionable. Plaintiff's got wiser on account of an objection being raised by defendant no.1 and filed application for amendment. Considering the fact that defendant no.1 himself believed that the relief of partition ought to have been sought in the same suit, there is an implied admission that

addition of relief of partition would not change the nature of the suit.

11. So far as the other amendments are concerned, some of them relate to the occurrence of subsequent events of demolition of the construction on the suit property, some relate to the acquisition of part of the suit property etc. Considering overall amendments sought to be introduced, I am of the view that proposed amendments would not change the nature of the suit.

12. Consequently, the present petitions are allowed. The order dated 14.07.2015 passed by the Joint Civil Judge, Senior Division, Bhusawal is set aside and plaintiff's application for amendment of plaint is allowed in terms of prayers made therein. The defendants in the suit shall have right to file additional written statement to the amended plaint.

(SANDEEP V. MARNE)
JUDGE