

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO.12670 OF 2022

PANDHARINATH MAHADU PATIL
VERSUS
CHAITANYA KASHINATH PATIL AND OTHERS

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Advocate for Petitioners : Mr Swapnil S. Patil
AGP for Respondent No. 2 : Mr Ajit M. Gholap

CORAM : SANDEEP V. MARNE, J.
DATE : 20th DECEMBER, 2022

PER COURT :

1. By this petition, petitioner challenges the order dated 15.09.2022 passed by the District Judge-1, Jalgaon below Exh. 53 in R.C.A. No. 387/2014 rejecting the application for amendment of plaint under Order VI Rule 17 of the Code of Civil Procedure.

2. The suit filed on 31.12.1993, has been decreed on 28.11.1997. The appeal against decree has been pending since the year 1997. The appeal is apparently at the stage of final hearing. At such a stage an application was moved seeking permission to amend the plaint on 21.07.2022. The amendment is essentially in two parts. The first part relates to the alleged execution of oral agreement and the second part relates to alleged disturbance of possession of petitioner by the respondents.

3. So far as the first part of the amendment is concerned, there are already averments about oral agreement in para No. 2 of the plaint. The oral agreement is alleged to have taken place before filing of suit.

Therefore, apart from the averments being already on record, the averment sought to be added by way of amendment with regard to the oral agreement would otherwise be grossly barred by limitation.

4. So far as the second part of the amendment is concerned, the plaintiff seek to add a prayer for not disturbing his possession by the respondents in the appeal. Though the suit is decreed, the appellate court has stayed the decree directing of handing over of possession. This *prima facie* indicates that petitioner is already in possession of the suit property. By stating that cause of action directing possession occurred 10 to 12 days before filing of application for amendment, the above amendment is sought to be introduced. No details of the alleged disturbance of the possession of the plaintiff by defendant is given in the application. Since the possession of the property is protected by the Appellate Court in appeal, there is no question of disturbing the possession of petitioner. In the event, petitioner makes out the case of violation of interim order by the respondent, petitioner has all the remedies open to him with regard to such violation.

5. Thus, both the amendments sought with regard to the alleged oral agreement as well as the alleged disturbance of possession belatedly at the stage when the appeal is to be heard finally can safely be stated to have been moved only for the purpose of delaying decision of the appeal.

6. The learned counsel for petitioner has relied upon the Judgment of the Apex Court in ***Pandit Ishwardas Vs. State of Madhya Pradesh and others reported in (1979) 4 SCC 163*** in support of his

contention that amendment can be allowed at the appellate stage. There can be no dispute to the proposition that if the amendment is absolutely necessary, the appellate court can always allow the same. However, in the present case, I have arrived at a conclusion that the amendment is not at all necessary for the purpose of determining the real question of controversy between the parties. The learned counsel for petitioner has further relied upon the Judgment of the Apex Court in case of ***Rajesh Kumar Aggarwal and Ors. Vs. K.K. Modi and Ors. Reported in (2006) 4 SCC 385*** in support of his contention that amendment to bring subsequent events on record must be allowed. The reliance of the learned counsel for petitioner on this Judgment is referable to second part of the amendment, wherein disturbance to possession is claimed 10-12 days prior to filing of the amendment application. It means that there was no allegation with regard to the disturbance of possession during pendency of appeal. There is stay granted by the appellate court to direction of Trial Court for handing over possession by petitioner to the respondents. It is therefore highly improbable that the alleged disturbance would have occurred 10 to 12 days before filing of amendment application in the plaint. In my view, the period 10 to 12 days before filing of application is deliberately and vaguely stated with a view to paint a picture as if the amendment is necessitated on account of latest events.

7. The appellate court has rightly rejected the application for amendment. The application for amendment as well as present petition being filed with an intention of further delaying decision of the appeal, is nothing but gross abuse of process of law. Petitioner is required to be

saddled with costs for filing such frivolous application for amendment as well as for filing present petition.

8. The writ petition is accordingly dismissed.

9. Petitioner to pay costs of Rs.10,000/- (Rupees Ten Thousand Only). The costs to be deposited in the appellate court within a period of four weeks from today. Respondent Nos. 2 to 4 in appeal are permitted to withdraw the amount of costs.

[SANDEEP V. MARNE, J.]

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