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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13599 OF 2017

Suvarna d/o Baswant Mahajan
and another = PETITIONERS

VERSUS

Maheshwar s/o Baswant Mahajan
and others = RESPONDENTS

Mr.Dr.R.R.Deshpande, Advocate h/for Ms. Priyanka R.
Deshpande, Advocate for petitioners;

Mr. Shrikant B.Madde, Advocate for Respondent Nos.1
and 2.

CORAM : PRITHVIRAJ K.CHAVAN,J.

RESERVED ON : 03/03/2022

PRONOUNCED ON : 08/03/2022

PER COURT :-

1. By this petition, the petitioners have impugned the order dated 21st September, 2017 passed by Civil Judge, Senior Division, Ahmadpur by which the learned Judge rejected an application seeking amendment of the plaint mainly on the ground that if the application is allowed it would change the nature of the suit as well as nature of the property.

2. Shorn of unnecessary details, a few

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facts, germane for disposal of this petition, can be summarized as follow, -

3. The petitioners are the daughters of deceased Baswant Mahajan. A suit for partition and separate possession with mesne profits came to be filed bearing No.75/2012. The respondents-defendants appeared and by virtue of their written statement contended that the suit is vexatious and prayed for its dismissal.

4. It is the contention of the petitioners that they had no knowledge about a sale-deed executed by the defendants 1 and 2 in favour of third person by laying down plots in Gut No.121/1 of Ahmadpur. Since they got the knowledge of the said sale, an application, seeking amendment of the plaint, came to be filed and, therefore, it is required to be allowed since it is a suit for partition and separate possession and also by virtue of unamended plaint, the petitioners seek to clarify the description of the property. There is, therefore, no question of change of nature of the suit nor change of nature of the property.

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5. At the outset, learned Counsel for the petitioners has drawn my attention to the fact that by virtue of the proposed amendment, the petitioners seek to add that defendant No.1 had sold the suit plot No. 24 and 32 out of survey No. 121/1 to defendant No.4 during pendency of the present suit through a registered sale-deed dated 28th July, 2009 without any necessity of Hindu joint family. It is also proposed to be amended that the defendants have sold plot No.25 to defendant No.5 and that is out of plot No.121/1 through a registered sale-deed and, therefore, a prayer is sought to be made that the sale-deeds are to be declared as null and void and not binding upon the petitioners. Learned Counsel has also drawn my attention to the 7/12 extract of Survey No.121/1, wherein total area of the land is described to the extent of 2 hectares 66 R, out of which the defendant Nos.1 and 2 had divided equal share amongst them by fraudulently obtaining a decree from the Civil Court.

6. On the other hand, the learned Counsel for the respondents-defendants vehemently supported

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the impugned order by submitting that the order is correct, proper and legal, which needs no interference in the supervisory jurisdiction of this Court.

7. As already stated, what is sought to be amended by the proposed amendment is simply a fact, which came to the knowledge of the petitioners subsequently and, therefore, there is no question of change of nature of the suit as well as what has been sought to be amended is the clarification of the suit properties.

8. If the prayer of the plaint is perused, it is apparent that the petitioners are claiming their 2/5th share out of the land bearing survey No.121/1 admeasuring 2 hectares 66 R; survey No. 128/1 admeasuring 3 hectares 88 R; survey No.131/2 admeasuring 1 hectare 35 R and finally survey No. 182/2 admeasuring 1 hectare and 89 R.

9. It has been held by a catena of decisions that amendment of a plaint can also be made at the final stage of the suit provided the proposed

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amendment is necessary to bring the real question in controversy between the parties to the fore. In this case, refusal of the proposed amendment would likely to create needless complications at the stage of execution in the event of the petitioners succeeding in the suit. No doubt the petitioners ought to have been diligent in promptly seeking the amendment in the plaint at an early stage; yet in the attending circumstances, the plaintiffs could not have gathered about the alleged sale-deed executed by the defendants. The proposed amendment, therefore, needs to be allowed by interference of this Court under its supervisory jurisdiction.

10. The learned Counsel for the petitioners has, therefore, rightly placed useful reliance on a judgment of the Supreme Court in the case of Abdul Rehman and Anr. Vs. Mohd. Ruldu and Ors. (Civil Appeal No. 7043 of 2012 arising out of SLP (C) No. 6324 of 2008) reported in 2012 (11) SCC 341. The facts are more or less identical in the said case. It would be apposite to extract para 10 of the judgment, which reads thus, -

"10. Next, we have to see whether the proposed amendments would alter the claim/cause of action of the plaintiffs. In view of the same, we verified the averments in the un-amended plaint. As rightly pointed out by Ms. Manmeet Arora, learned counsel for the appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the un-amended plaint. We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the un-amended plaint and, therefore, the relief of cancellation of sale deeds as sought by amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. In view of the same, the contrary view expressed by the trial Court and High Court cannot be sustained. It is not in dispute that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment of the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice should have been caused to respondent Nos.1-3 (defendant Nos.1-3 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation." (Emphasis supplied)

11. No doubt, the petitioners herein could have, by an independent suit, sought the relief of

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declaration of the sale-deeds as null and void and not binding upon them; yet they choose to incorporate the said fact in the present suit itself, which would not, in any manner, change the nature of the suit and even the reliefs claimed can not be said to be barred in law. Moreover, the proposed amendment would not cause any prejudice to the defendants-respondents.

12. For the reasons aforesaid, the impugned order dated 21st September, 2017 passed by Civil Judge, Senior Division, Ahmadpur below Exhibit-96 in RCS No.75/02012, needs to be quashed and set aside and accordingly it is quashed and set aside.

13. The petitioners shall amend the plaint in view of the application dated 21.7.2017 within two weeks from the date of receipt of this order subject to costs of Rs.1,000/- (Rupees one thousand) to be paid to the respondents-defendants.

14. After amending the plaint, the respondents-defendants are at liberty to make consequential amendment in their pleadings.

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15. The learned Civil Judge shall permit the parties to adduce further evidence in consonance with the amendment in the pleadings and shall expeditiously dispose of the suit at the earliest without granting unnecessary adjournments.

16. The petition stands disposed of in the aforesaid terms.

(PRITHVIRAJ K.CHAVAN)
JUDGE

BDV