

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4470 OF 2022

Janseva Private Family Trust Thr.
Trusties and Ors. ... Petitioners

V/s.

Narayan D. Khanolkar ... Respondent

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DARADE

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Mr. Chaitnya B. Nikte, a/w Ritvij Kale a/w Prajit S.
Sahane for the Petitioners.

Ms. Lalita S. Phadke a/w Mr. Jeffy Caleb a/s Mr. H.G.
Dharmadhikari for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 19, 2023

P.C.:

1. The petitioners-original plaintiffs are challenging order passed by the Trial Court rejecting the application for amendment on the ground that proposed amendment will change the nature of suit. The petitioners-original plaintiffs filed Special Civil Suit No.1790 of 2019 seeking relief that development agreement and power of attorney dated 29th January 2008 stands terminated and not binding on the plaintiffs as defendant committed breach of contract. Further relief of declaration that sale deed dated 30th March 2019 be declared as void-ab-initio and fraudulent. Permanent injunction restraining defendant from creating third

party rights based on sale deed dated 30th March 2019 is also sought.

2. The defendant contested the suit by filing written statement. Before commencement of trial, the petitioner filed an application below Exhibit-31 to incorporate paragraph No.16(A) and prayers in the plaint. The Trial Court rejected the application based on finding that such amendment will change the nature of the suit. The petitioners have filed present writ petition.

3. At the outset, learned counsel for the petitioner, on instructions made a statement that he has instructions not to press proposed amendment in terms of paragraph No.5 of amendment application. The statement is accepted. Therefore, validity of impugned order to the extent of paragraph No.4 of the application for amendment needs to be considered. It is not in dispute that the amendment application is filed before the commencement of Trial. Therefore, proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908 is not attracted.

4. Learned counsel for the respondent submitted that the fact disclosed in proposed amendment will change the nature of suit. Therefore, such amendment cannot be allowed. Such argument could not be considered at the stage of amendment filed before the commencement of Trial. Since proviso to Order 6 Rule 17 is not attracted. Therefore, rejection of the amendment is not proper.

5. On perusal of the amendment and the averments made in the plaint, I am satisfied that the ground pleaded in paragraph No.16(A) is additional ground for the purpose of seeking relief

prayed in prayers in the suit. Since pleadings in proposed amendment seek to incorporate addition, such amendment cannot be termed as an amendment which will change the nature of suit. Therefore, Trial Court was not justified in rejecting application for amendment.

6. Needless to state that the defendant shall entitle to file additional written statement to the extent of proposed amendment.

7. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)