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

WRIT PETITION NO.8772 OF 2021

Ramdas Sopan Kudale ... Petitioner
V/s.
Nandakumar Eknath Pingale & Ors. ... Respondents

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Mr. Ashok B Tajane, for petitioner.

Ms. Rekha Musale, for respondent Nos.3-a to 3-d.

Ms. Sandhya A. Mailagir, for respondent Nos.4 & 5.

Mr. S. S. Patwardhan i/by Ms. Soumitra Gokhale, for
respondent Nos.1 & 2.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 3, 2023

P.C.:

1. Challenge in this writ petition is to the order dated 30 January 2021 allowing amendment of plaint.
2. The petitioner is the original plaintiff who filed Special Civil Suit No.2537 of 2010 seeking relief of declaration that agreement to sale dated 29 March 2006 is obtained by misrepresentation and fraud which is not binding on him. The application filed by the respondent Nos.1 & 2. Consequential injunction is sought against defendants not to disturb his possession over the suit property. Further, declaration regarding power of attorney having obtained by defendant Nos.1 & 2 be declared as null and void is also sought.

Further, injunction not to enter into transaction based on power of attorney dated 29 March 2006.

3. Before commencement of the trial, the plaintiff filed an application on 7 December 2019 to incorporate prayer of partition and necessary pleadings to raise plea of partition. The Trial Court allowed the application holding that the proposed amendment is necessary to decide real controversy between the parties.

4. The petitioner has, therefore, challenged the same order.

5. Learned Advocate for the petitioner submitted that filing of application on 7 December 2019 in a suit filed in the year 2010 amounts to delay. According to him, the proposed amendment changes nature of suit as the suit for declaration and injunction will be converted into suit for partition, separate possession, declaration and injunction. According to him, in an earlier suit bearing Special Civil Suit No.2208 of 2007, status of the suit property has already been adjudicated to be property of joint family property and therefore, the amendment ought not to have been allowed.

6. In so far as the delay in filing application is concerned, considering the stage of suit i.e. the amendment application having been filed before commencement of trial, in my opinion, there is no delay in filing the application.

7. The next contention is in relation to change of nature of the suit. The present suit is filed for seeking relief of possession over the suit property and injunction restraining defendant from disturbing possession of plaintiff over the suit property. After the

amendment to incorporate relief of partition is allowed, the suit will be for partition, declaration possession and injunction; therefore, in my opinion there will not be change in the nature of suit. In the facts of the case, the suit property was subject matter of earlier suit. It cannot be disputed that the petitioner will be entitled to file suit for partition based on the averments made in the proportion on the date of amendment. Therefore, to avoid multiplicity of proceeding, positive exercise of discretion by the Trial Court cannot be faulted.

8. In so far as the issue of status of property being adjudicated in an earlier suit is concerned, it is well settled that merits of proposed amendment need not be gone into at the stage of deciding application under Order 6, Rule 7 of the Code of Civil Procedure, 1908. Therefore, on merits whether the petitioner would be entitled to relief as claimed in the proposed amendment is not a relevant aspect while deciding the application for amendment of plaint.

9. Lastly, learned Advocate for the petitioner relied upon the judgment of Apex Court in the case of **Life Insurance Corporation of India Versus Sanjeev Builders Private Limited and Another**, reported in 2022 SCC OnLine SC 1128. The Apex Court in paragraph 70 has laid down the conclusion as regards discretion conferred on the Court while allowing application for amendment. There cannot be dispute about the proposition of law laid down by the Apex Court; however as held earlier, the change in nature of suit is in relation to entirely different cause of action. In the facts of the case, the plaintiff has sought reliefs in relation to suit

property and the relief of partition. The causes of action for both the reliefs are interlinked; therefore, ought to avoid multiplicity of proceeding it was open for the Trial Court to allow such amendment in the interest of justice. Therefore, in my opinion, there is no error of jurisdiction committed by the Trial Court while allowing the amendment. Hence, there is no merit in the writ petition.

10. The writ petition is, therefore, dismissed.

(AMIT BORKAR, J.)