

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8751 OF 2023

Shashikant Damodar Jadhav & Anr.

...Petitioner

Versus

Shripati Shamrao Patil & Anr.

...Respondent

Mr. Ranjeet H. Patil for the Petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : July 19, 2023.

P. C. :

1. Heard.
2. The challenge in the Petition is to the order dated 11th July, 2022 permitting the amendment of the plaint.
3. Learned counsel appearing for the Petitioners submits that the Application for amendment, although being a pre trial amendment, is filed in the year 2022, whereas, the suit is of year 2007. He would further contend that the earlier proceedings was mentioned in his written statement which was filed in the year 2017 and as such, there is delay in

filing the Application for amendment.

4. Considered the submissions and perused papers with the assistance of the learned counsel appearing for the Petitioners.

5. The suit i.e. Regular Civil Suit No. 285 of 2016 is instituted by the Respondent No. 1-Plaintiff seeking declaration of ownership in respect of the suit property and for injunction. It appears that the suit property was sold by the Defendant No. 3 to the Plaintiffs during the pendency of an earlier suit of the year 2010 in which the present Petitioners were the Plaintiffs. The said Suit No. 54 of 2010 was decreed in favour of the Petitioners and the sale deed was executed. The Application of the Respondent No. 1 seeks to place on record the details of the earlier suit and seek a declaration in respect of the earlier proceedings. It is well settled that pre trial amendment are to be liberally allowed and at this stage is not necessary to go in the merits of the amendment.

6. Learned counsel appearing for the Petitioners would submit that during the earlier proceedings, costs were imposed upon Respondent No. 2-Original owner, however, the same fact is not relevant for the purpose of

deciding validity of the impugned order allowing the amendment. It is not the case of the Petitioners that the amendment change the nature of the suit or introduces any fresh cause of action. The impugned order of the Trial Court records that in the Application seeking amendment, the Plaintiff has pleaded that the said fact came to his knowledge when the Defendant No. 3 i.e. the Original owner filed his written statement on 20th October, 2021 stating about the previous agreement executed by him with the Defendant Nos. 1 and 2 as also about the proceedings which were continued right up this Court. Considering that the proposed amendments are pre trial amendments, the Trial Court has permitted the Application.

7. The law is settled by the decision of the Apex Court in the case of ***Life Insurance Corporation Of India vs Sanjeev Builders Private Limited***¹ in which the Apex Court has held that delay should not be a ground for rejecting the pre trial amendment. In that view of the matter, there is no infirmity in the impugned order of the Trial Court allowing the proposed amendment. The Writ Petition being devoid of merits stands dismissed.

[Sharmila U. Deshmukh, J.]

1. 2022 SCC OnLine SC 1128.