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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.2957 OF 2022
in
SUIT NO.3148 OF 2009

Kamlesh Jaysukhlal Bhuta	]	..	Applicant
IN THE MATTER OF			
Kamlesh Jaysukhlal Bhuta & Ors.	]	..	Plaintiffs
vs.			
Vasantben Ramniklal Bhuta & Ors.	]	..	Defendants

Mr.Zubin Behramkamdin, Senior counsel a/w Vyom Shah, Jimish Shah, Shaheen Moghul i/b Divya Shah Associates for the Applicant/ Plaintiffs.

Mr.Shailesh Shah, Senior Counsel a/w D, Banerji, Aditya Udeshi, Netaji Gawade and Nayan Bhalekar i/b M/s.Sanjay Udeshi & Co. for Defendant Nos.2 to 5.

Mrs.Rekha Rane, 2nd Assistant to Court Receiver present.

CORAM : BHARATI DANGRE, J

DATE : 16th June, 2023

P.C.

1] By the present Application, the Plaintiffs seek amendment as per schedule I to IV, in the Plaint, filed in the year 2009, seeking partition of the properties mentioned as “joint family properties”.

Late Jaysukhlal Bhuta filed a Suit for partition of the joint properties and/or joint family properties, in which the deceased Ramniklal and the original Plaintiff has claimed to have equal share.

Despite all due diligence, the Plaintiff claim that all the properties

acquired by the predecessor could not be included in the Suit, as preliminary information that was available at the relevant time formed the basis for institution of the Suit.

However, a specific pleading was made in the Plaint to the effect that the Suit is filed on the basis of information available before filing of the Suit and keeping the option open to include the other properties, belonging to the family, which may come to the knowledge of the Plaintiffs, at some subsequent point of time.

2] With this background, when certain properties came to the notice of the Plaintiffs, as being joint family properties, an application is moved on 24.06.2022 for including those properties in Suit described as suit properties, by amending the Plaint.

Apart from this, the existing properties also suffer from errors in their description, either in regard to its measurement or with regard to the name of persons as entered in the 7/12 extract or property card and amendment is also sought to that effect.

Prayer clause (a) of the Interim Application seek permission to withdraw Chamber Summons No.1175/2018 and Interim Application No.2424/2020 without prejudice to the Plaintiff's rights and contentions.

3] The Application is vehemently opposed by the learned counsel for the Defendants, who has placed on record Affidavit in support of certain documents and he would submit that the amendment being filed on a special count that the properties were not within the knowledge of the Plaintiffs, deserve to be rejected, as on perusal of the Plaint, it is apparent that certain admissions in the plaint as regards certain properties are sought to be withdrawn by bringing an amendment and it will effect the right of the Defendants.

Apart from this, the learned counsel for the Defendants would also contest the amendment on the ground of delay and in particular he would submit that certain properties which were described as the properties belonging to the Defendants are now sought to be brought within the campus of the suit properties by describing them as 'joint family properties' and this definitely would cause grave prejudice to the Defendants and therefore, amendment must be rejected.

The learned counsel for the Defendants has relied upon decision of Apex Court in the case of ***Estralla Rubber vs. Dass Estate (P)Ltd.***¹ and the decision in the case of ***South Konkan Distilleries and Another vs. Prabhakar Gajanan Naik & Ors.***²

4] The cardinal principle in considering an Application filed under Order 6 Rule 17 pertaining to the amending being well settled by this time, which clearly stipulate that application for amendment cannot be rejected merely on the ground that there is delay in seeking amendment. The relevant criteria is where proceedings in the suit have commenced in terms of Rule 17, it is permissible for the court at any stage of the proceedings to permit to alter or amend the Plaint, in such a manner and on such terms as may be just and necessary, if such amendments are necessary for the purpose of determining the real question in controversy between the parties. An exception is pointed out by way of proviso, which stipulate that no application shall be allowed after the trial has commenced and unless the court comes to the conclusion that inspite of due diligence, the party could not raise the matter before commencement of trial.

1 (2001)8 SCC 97

2 (2008) 14 SCC 632

5] The position of law has now been well settled to the effect that the Court shall allow all such amendment that may be necessary for determining real question or controversy between the parties with a proviso that it shall not cause injustice or prejudice to the other side. It is necessary for the Court to determine whether such amendment is necessary to decide real rift between the parties and at the stage of considering application for amendment, as it has to be allowed or not, merits of the amendment may not be gone into. It is only when the other party claims serious prejudice which would be in the nature of change in the nature of the proceedings itself and or that amendment is not necessary for the effective decision, the amendment can be disallowed. Ultimately it is the Plaintiff who is in charge of his Suit and has a choice to amend his plaint for seeking such reliefs as he desire, subject to the rider of the amendment, being allowed.

6] In the wake of aforesaid authoritative pronouncement as laid down by the Hon'ble Apex Court in the case of Revajeetu Builders & Developers vs. Narayanasamy & Sons³, which has been followed in the case of Mohinder Kumar Mehra vs. Roop Rani Mehra & Ors⁴, , if the present Interim Application is perused, I am of the opinion that the same deserve to be allowed, so as to avoid multiplicity of the proceedings, as if at all it is permissible for the Plaintiffs to file a Suit on the same counts in respect of the properties about which he has gained knowledge that they belong to joint family properties.

In that case, interest of justice demand that to avoid multiplicity of the proceedings such cause can be combined with the present Suit, where the issues are not yet framed.

This would of course be granted, with a liberty being conferred

3 (2009)10 SCC 84

4 (2018) 2 SCC 132

upon the Defendants to raise the point of limitation i.e. the delay in bringing the amendment and raising a ground, that these facts and circumstances were within the knowledge of the Plaintiffs, but still it was not made part of the Plaint.

7] Apart from this, as far as merits of the Application are concerned, since certain properties are sought to be introduced as joint family properties and the learned counsel for the Defendant has specifically pleaded that some of the properties were shown as his properties, it is open for the Defendant to contest the amendment by filing additional written statement and contesting the claim raised for each and every property including description, ownership/possession as well as type of the property i.e whether belong to Hindu Joint Family.

8] In the wake of above, I do not think that the amendment shall be rejected only on the ground of delay, as it cannot be said that prejudice would be caused to the Defendant, in case if he is afforded an opportunity to contest the amendment on merits, by keeping liberty open to him to raise the point of limitation.

9] In the wake of above, Interim Application is allowed.

Necessary amendment to be carried out within a period of four weeks from today. Copy of amended plaint shall be served upon the learned counsel for the Defendant within a period of two weeks thereafter. The additional written statement, pursuant to amendment to be filed within a period of 8 weeks thereafter.

10] By order dated 09.10.2018 the Receiver was requested to appoint licensed surveyor on his panel to inspect the property, to

suggest whether physical division is possible and also to obtain Valuation Report.

The Court Receiver has prayed for discharge as the Report is submitted.

Let the Court Receiver obtain necessary instructions on valuation so that request of the Court Receiver can be taken into consideration after six weeks.

Chamber Summons No.1175/2018 and Interim Application No.2424/2020 stands disposed off as withdrawn.

[BHARATI DANGRE, J]