

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6281 OF 2022

Smt. Ramkali Wd/o Ramkumar Shukla
(Dead) through her legal heirs

1. Jitendra S/o Ramkumar Shukla,
Aged about 42 years, Occupation :
Agriculturist, R/o Near Police Station
at Post Sindi Railway, Tahasil Seloo,
Sindi Railway District Wardha
2. Smt. Padma W/o Anil Dikshit,
Aged about 38 years, Occupation :
Household, R/o Opposite Police Station,
Ward No.5, Post Sindi Railway
Tehsil Seloo, District Wardha
3. Rajendrakumar S/o Ramkumar Shukla
Aged about 58 years, Occupation :
Agriculturist, R/o Infront of Hanuman
Mandir, Naginbag, Jatpura, Chandrapur
Tahsil and District Chandrapur

.... **PETITIONERS.**

// VERSUS //

Yadavrao W/o Vitthalrao Naukarkar,
Aged about 60 years, Occupation Nill
R/o Vikhni, Tahasil Samudrapur,
Dist. Wardha

.... **RESPONDENT.**

Shri S.Y.Deopujari, Advocate for Petitioners.
Shri A.V.Lokhande, Advocate for the Respondent.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 11, 2023.

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. In the present writ petition order dated 23/06/2022 passed below Exh.48 by Civil Judge Junior division, Samudrapur rejecting application under Order 6 Rule 17 of the Code of Civil Procedure (CPC) for amendment is under challenge.

4. The petitioners are the legal heirs of the original plaintiff, who filed a suit for declaration and permanent injunction against the defendant to the extent that plaintiff is the legal owner of the suit field bearing Field Survey No.38(New), 77/2 (Old),

admeasuring 2.83 hectares situated at Mouza : Barbadi, Tahsil : Samudrapur, District : Wardha being legal heir of her son namely Ramakant, who expired in 1992 and who had purchased it vide registered Sale Deed dated 02/08/1991 from Smt. Sakhubai widow of Mahadeo Fating. It is the further case of the plaintiff that Sakhubai was the sister of mother of the defendant and defendant has no right, title or interest in the suit field and therefore, to restrain the defendant permanently from disturbing the possession of the plaintiff over the suit field.

5. During the pendency of the suit, plaintiff Smt. Ramkali died and her legal heirs were brought on record. Thereupon, the legal heirs have found that while drafting the plaint inadvertently certain facts were not brought on record and prayer for cancellation of alleged Gift Deed dated 01/07/1980, allegedly executed in favour of the defendant by Smt. Sakhubai was not made and therefore, an application under Order 6 Rule 17 of CPC came to be filed seeking amendment to the plaint. The said application Exh.48 came to be

rejected vide impugned order dated 23/06/2022. Hence, this petition.

6. I have heard the learned counsel for the respective parties.

7. Shri Deopujari, learned counsel for the petitioners submits that the amendment application was moved before the commencement of the trial and therefore, the trial Court ought to have adopted the liberal approach while considering the amendment application.

8. It is further submitted that the Court has considered the amendment on merit and also given the finding about the legality of Deed of Cancellation of the gift. It is further pointed out that even on the point of limitation the application came to be rejected.

9. Shri Lokhande, learned counsel for the respondent submits that the application was filed after framing of the issues and

therefore, it is filed after commencement of the trial, hence, the Court has rightly rejected it.

10. It is further submitted that the learned trial Court has rightly held that the challenge raised to the Gift Deed dated 01/07/1980 is beyond limitation. He, therefore, submits that no error has been committed by the learned trial Court in rejecting the application.

11. In light of the rival submissions, I have perused the record and the impugned order.

12. In the present matter, on the date of filing of the application for amendment the evidence was not commenced. However, only issues were framed. Thus, in light of the judgment of Division Bench of this Court, in the case of *Mahadeo Maruti Bhanje ..vs.. Balaji Shivaji Pathade and anr.*, reported in **2012(5) Bom.C.R. 777**, it is clear that trial in Civil Suit commences from date of filing of affidavits in lieu of examination in chief of witnesses.

13. Thus, it is evident that the application under Order 6 Rule 17 of CPC was filed by the petitioners before commencement of the trial.

14. The Hon'ble Supreme Court of India in the case of *Revajeetu Builders and Developers ..vs.. Narayanaswamy & Sons*, reported in (2009)10 SCC 84, while reiterating the principles as regards the provision namely Order 6 Rule 17 of CPC has held thus :

“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) Whether the application for amendment is bona fide or mala fide;*
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

15. The Hon’ble Supreme Court of India in the case of *Mohinder Kumar Mehra ..vs.. Roop Rani Mehra and Others*, reported in **(2018)2 SCC 132**, has observed thus :

“19. While considering the prayer of amendment of the pleadings by a party, this Court in the case of Mahila Ramkali Devi & Ors. Vs. Nandram (Dead) through Legal Representatives & Ors., (2015) 13 SCC 132 has again reiterated the basic principles, which are to be kept in mind while considering such applications in Paragraphs 20, 21 and 22, which is quoted as below:-

“20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

21. In our view, since the appellant sought amendment in Para 3 of the original plaint, the High Court ought not to have rejected the application.

22. In Jai Jai Ram Manohar Lal v. National Building Material Supply³, this Court held that

the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.”

20. *Although, learned counsel for the parties in their submissions have raised various submissions on the merits of the claim of the parties, which need no consideration by us since the only issue which has to be considered is as to whether the amendment application filed by the plaintiff deserves to be allowed or not. We make it clear that we have neither entered into merits of the claim nor have expressed any opinion on the merits of the claim of either party and it is for the trial court to consider the issues on merits while deciding the suit.*

21. *Taking into overall consideration of the facts of the present case and specially the fact that evidence by the parties was led after the filing of the amendment application, we are of the view that justice could have been served in allowing the amendment application. We thus allow the appeal and set aside the order of the High Court as well as the order of the Additional District Judge. The amendment application I.A. No. 1001 of 2011 stand allowed. Both the parties have led their evidences and case has already been fixed for hearing, however, to avoid any prejudice to the parties, justice will be served in giving a limited opportunity to the parties to lead additional evidence, if they so desire.*

22. *We thus direct that the parties may file this order before the trial court within two weeks from today, on receipt of the order, the trial court shall consider on framing of additional issue, if necessary and shall thereafter grant opportunity to the parties to lead additional evidence, if any. The entire exercise shall be completed within three months and thereafter suit be decided finally. The parties shall bear their own costs. We make it clear that we have not expressed any*

opinion on merits of the case including on the question of applicability of Article 110 of the Limitation Act and all the issues shall be decided on the basis of materials on record without being influenced by any observation made by us.”

16. The Hon’ble Supreme Court in the case of *Sampath Kumar Vs. Ayyakannu*, reported in (2002) 7 SCC 559 has held thus:

“9. Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-form and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.”

17. The Hon'ble Supreme Court of India in the case of *Pankaja Vs. Yellappa*, reported in **(2004)6 SCC 415** has held thus:

“13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments?”

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

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17. Factually in this case, in regard to the stand of the defendant that the declaration sought by the appellants is barred by limitation, there is dispute and it is not an admitted fact. While the learned counsel for the defendant-respondents pleaded that under Entry 58 of the Schedule to the Limitation Act, the declaration sought for by the appellants in this case ought to have been done within 3 years when the right to sue first accrued, the appellant-plaintiff contends that the same does not fall under the said Entry but falls under Entry 64 or 65 of the said Schedule of the Limitation Act which provides for a limitation of 12 years, therefore,

according to them the prayer for declaration of title is not barred by limitation, therefore, both the courts below have seriously erred in not considering this question before rejecting the prayer for amendment. In such a situation where there is a dispute as to the bar of limitation this Court in the case of Ragu Thilak D. John Vs. S. Rayappan & Ors. 2001(2) SCC 472 (supra) has held :-

"The amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for."

18. The Hon'ble Supreme Court of India in the case of *Ragu Thilak D. John Vs. S. Rayappan*, reported in **(2001)2 SCC 472** has held thus:

"5. AFTER referring to the judgments in Charan Das v. Amir Khan [AIR 1921 PC 50], L.J. Leach & Co. Ltd. & Anr. v. Jardine Skinner & Company [1957 SCR 438], Smt. Ganga Bai v. Vijay Kumar & Ors. [1974 (2) SCC 393], M/s. Ganesh Trading Co. v. Moji Ram [1978 (2) SCC 91] and various other authorities, this Court in B.K.N. Pillai v. P. Pillai & Anr. [JT 1999 (10) SC 61] held:

"THE purpose and object of Order 6 Rule 17 Civil Procedure Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while

deciding such prayers should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.”

19. The Hon’ble Supreme Court of India in the case of *Haridas Alidas Thadani ..vs.. Godrej Rustom Kermani*, reported in (1984)1 SCC 668 has held thus :

“1. ... It is well settled that the Court should be extremely liberal in granting prayer for amendment of pleading unless serious injustice or irreparable loss is caused to the other side. It is also clear that a Revisional Court ought not to lightly interfere with a discretion exercised in allowing amendment in absence of cogent reasons or compelling circumstances.”

20. The Hon’ble Supreme Court of India in the case of *B.K.Narayana Pillai..vs..Parameswaran Pillai*, reported in (2000) 1 SCC 712 has held thus :

“3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and

the Supreme Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."

21. It is thus, evident that Order 6 Rule 17 of the CPC consists of two parts. Whereas, the first part is discretionary and leaves it to the Court to order amendment of pleadings. The second part is imperative and enjoins the Court to allow amendment which is necessary for determining the real question in controversy. It is also evident that pre-trial amendments should be considered literally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case, generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the later case, the question of prejudice may arise and that shall have

to be answered by reference to the facts and circumstances of each case.

22. As far as the period of limitation is concerned, the law in this regard is quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation, an amendment should not be allowed. The Hon'ble Supreme Court of India has time and again reiterated that discretion in such cases depends of the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really sub-serves the ultimate cause of justice and avoids further litigation the same should be allowed.

23. In the teeth of above referred well-settled law, I revert back to the facts of the present case.

24. The learned trial Court while rejecting the application for amendment has gone into the merit of the proposed amendment and the Court has went to the extent of deciding the validity of Gift Deed and further to hold that the claim of cancellation of Gift Deed is time barred. Having considered the law as regards amendment, final determination as to whether the claim could be held to be barred by time could have been decided only after considering the evidence led by the party. Even without giving any opportunity to lead evidence to establish the validity of the Deed of Cancellation of gift, it was too early for the trial Court to come to the conclusion that the Gift Deed is invalid and the claim is barred by limitation.

25. As I have observed that the application for amendment was moved before the commencement of the trial, the learned trial Court ought to have taken liberal approach in the present matter.

26. In the circumstances, I have no hesitation to hold that the learned trial Court has committed error in rejecting the application for amendment. Accordingly I pass the following order:

- i) The writ petition is allowed.
- ii) The impugned order dated 23/06/2022 passed below Exh.48 by Civil Judge Junior Division, Samudrapur, is hereby quashed and set aside and consequently the application Exh.48 for amendment is allowed.

Rule is made absolute in the above terms. No order as to costs.

(ANIL S. KILOR, J)

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