



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

94 WRIT PETITION NO. 6307 OF 2023

RAM GYANA ALIAS GYANBA GHODKE

VERSUS

STATE OF MAHARASHTRA
THROUGH THE COLLECTOR AND OTHERS

...

Advocate for the Petitioner :

Mr. Mayur Subhedar h/f. Mr. Dharurkar Chaitanya V.

AGP for Respondent/State: Ms. K. R. Jamdhade

Advocate for Respondent No.3 : Mr. Sachin B. Munde

Advocate for Respondents No.4&5 : Mr. Patne Santosh N.

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CORAM : ARUN R. PEDNEKER, J.

DATE : 12th AUGUST, 2024

ORDER:

1. By the present petition, the petitioner is challenging the order dated 03.09.2022, passed by the trial court rejecting the application filed by the petitioner / plaintiff seeking amendment of the plaint under Order 6 Rule 17 of the CPC.

2. Brief facts giving rise to the petition are summarized as under.

A] The petitioner filed the civil suit R.C.S. No.9/2015, before the learned Civil Judge Senior Division, Omerga for declaration of ownership and perpetual injunction of the suit

property bearing Gat No.355 situated in village Mahalingraiwadi, Taluka Omerga, District Osmanabad admeasuring 2 Hectore 2 Are.

In the suit it was the prayer in the plaint as under:

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Hence it is prayer that.

The suit of plaintiff may kindly be decreed against defendants with costs as under.

1] the plaintiff be declared owner of suit land bearing Gat No.355 Adm 2 H. 2 R. assessed Rs.3.47 ps situated at village Mahalingraiwadi, Tq. Omerga of which four boundaries were shown in para no.3 of the plaint.

2] the defendants hereby restrained presently from obstructing in the possession of plaintiff over the suit land. Moreover they are restrained permanently from doing any illegal construction of houses, road and Samaj Mandir in the suit land of the plaintiff.

3] that, the costs of the suit be given to plaintiff from defendants.

4] any other recites fore which plaintiff is legally and equitably entitled also be given.”

B] It is contended in the plaint that the defendants are interfering with the suit property and are constructing road through the suit property, so also, are trying to encroach upon the property. As such, an injunction is prayed against the defendants from construction of houses, road and samaj mandir in the suit land of the plaintiff. The suit was filed on 01.04.2015. The petitioner moved an application for seeking amendment of the plaint under Order 6 Rule 17 of the CPC, on 13.07.2022, seeking deletion of para no.4 and 2 of the plaint and seeking addition of para no.4A and 2 in the plaint as under:

“

ORIGINAL PLEADINGS

2] That, the defendant nos.3 to 6 with collusion to each other constructing roads, houses and Samaj Mandir in the suit land without consent of plaintiff and without notice to him and without giving any compensation to plaintiff.

4] That, plaintiff applied to defendant no.4 Gramvikas officer Yenegur under right to information Act on what basis the construction of houses are going on. This application was given by plaintiff on 15/05/2014. Moreover, the plaintiff complained to def. No. 3 B.D.O. Omerga regarding the construction of houses in the suit land. At that time the construction was stopped by det. No. 2 to 7 but after that the def. no.5 contractor Dilip Bhalerao in collusion with def No.3 to 5 again started construction of roads and Samaj Mandir and houses illegally, so as to grab the suit land of plaintiff without any cost. So plaintiff given suit notices to all defendants through his advocate on 05/02/2015 by RPAD. These notices were served against all defendants but defendants till today not replied to the suit notices of plaintiff. On the contrary defendant no. 3 to 7 are trying to complete the construction of samaj Mandir, internal Roads and houses (Gharkul) with high speed. Plaintiff requested defendants not to construct houses, road and Samaj Mandir without his consent illegally for that all the defendants denied. Moreover the defendant nos. 2 to 7 denied the ownership of plaintiff in the suit land saying that, the suit land is of yenegur Grampanchayat. Due to these acts and denial of defendants plaintiff occurred right to file this suit against defendants and defendants are liable to answer the claims of plaintiff. The cause of act on aroused to

file this suit against defendants to plaintiff on 05/02/2015 when plaintiff issued suit notices to defendants. The cause of action is still in continuation.”

“

AMENDED PLEADINGS

4A) That, during the pendency of suit the defendants nos. 6 to 44 made encroachment over the 1 Hec. 22 R. land by constructing houses, roads & Samaj Mandir from Southern side of entire suit land on the instigation of defendant no. 1 to 5. It is pertinent to note that the defendant nos. 1 to 5 mutated their names to the extent of area 1 Hec. 22 R. without notice to the plaintiff as Maharashtra State vide M.E. No. 918 & during the pendency of suit. So this M.E. No.918 is not binding on the plaintiff. As during pendency of suit all defendants made encroachment over the southern side 1 Hec. 22 R. land plaintiff. Plaintiff requested defendants to remove the encroached construction by their expenses & give vacant possession of this 1 Hec. 22 R. land for which all defendants denied. For relief of possession and mandatory injunction for removal of encroachment & vacant possession cause of action aroused before 2 months of filing an application for appointment of court commissioner vide Exh. 117. For relief of declaration regarding non binding of the M.E. No. 918 on the plaintiff cause of action arouse on 18/08/2021 when plaintiff withdrawn copy of M.E. no. 918 and denied by the defendants on 23/08/2021.

2) The possession of Southern side 1 Hec. 22 R land from land gat no. 355 situated at village Mahalingrayawadi Tq. Omerga may kindly be given to plaintiff from defendants, by removal of encroachment by the expenses of defendants by granting mandatory injunction in favour of plaintiff & against defendants.”

C] The trial court, on consideration of the application and reply held that the plaintiff is seeking a relief of declaration of ownership of Gat No.355 admeasuring 2 Hector 2 Are of land in village Mahalingraiwadi. Whereas defendants no.4 and 5 have come with a specific case that out of Gat No.355, the plaintiff had donated 02 Acres 02 Gunthas land in the year 1996-97 for the earthquake rehabilitation. Thereafter, 27 families are residing in the rehabilitated portion of the suit land. According to defendants, the plaintiff is trying to encash the absence of the entries of the donation of land in the 7/12 extract.

D] The trial court further held that it is burden on the plaintiff to show that he is owner and possessor of the suit land bearing Gat No.355 of village Mahalingraiwadi and as per provisions of Order 6 Rule 17 of CPC, the court may at any stage of the proceedings allow either party to alter or amend the pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. The trial court further held that, in the instant case, the plaintiff has come with specific pleading of being owner and possessor of

the suit land and on the contrary the defendants have come with specific defence of the plaintiff himself donating some portion of the suit land for earthquake rehabilitation. The real question of controversy between the parties is to be decided, as to who is the real owner of the suit land and that the defendants no.8 to 44 have added themselves as the defendants during the course of hearing of the suit and, therefore, the court held that it cannot be said at this juncture that the amendment sought by the plaintiff through this application is necessary for determining real question in controversy between the parties. The parties are suppose to discharge the burden on their own shoulders as per provisions of the Indian Evidence Act and the application for amendment was, thus, rejected.

3. The Hon'ble Supreme Court in the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another** reported in **AIR 2022 SC 4256**, has crystallized the law on the aspect of amendment of pleadings under Order 6 Rule 17 of the CPC and has held as under:

“70. Our final conclusions may be summed up thus:

(i) ...

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest

the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi and Ors., 2022 SCC OnLine Del 1897) : (AIROnline 2022 Del 1797)."

4. Considering the law laid down in the case of **Life Insurance Corporation of India** (*supra*), now, we can analyse the facts of the present suit.

5. In the original suit the plaintiff has contended that the plaintiff is the owner of the suit property. Prayer for declaration of the ownership in the suit is made. It is also stated at para 4, in the plaint, that the defendants no.3 to 7 are trying to complete the construction of samaj mandir, internal roads and houses with high speed. The plaintiff prayed for injunction against the defendants not to construct houses, road and samaj mandir without his consent illegally. Defendants no.2 to 7 have denied the ownership of the plaintiff in the suit land contending that the suit land belongs to the grampanchayat. As such, the prayer is made in the suit restraining the defendants permanently from doing any construction in the suit land. By the amendment, which is sought to be made, the plaintiff seeks deletion of para 4 in the plaint and, further, seeks introduction of 4A, whereby he has stated that certain mutation

entries are carried out qua the encroached lands and, that, they are not binding upon the plaintiff as during the pendency of the suit the defendants have made encroachment over the suit land i.e. over 1 Hector 22 Are land and has prayed that the defendants to remove construction by their expenses and to give vacant possession of 1 Hector 22 Are land and for relief of possession and, mandatory injunction. In added para 2, the plaintiff seeks directions to the defendants to hand over vacant land of 1 Hector 22 Are by removing the encroachment. It is contended in the amendment application that encroachment has happened during the pendency of the suit.

6. The learned counsel appearing for the defendants submits that these are the constructions made much prior to the filing of the suit and that a barred claim is sought to be introduced by the plaintiff. It is further pointed out that the amendment are not necessary to determine the real issue in controversy in the suit. Applying the law as laid down in the case of **Life Insurance Corporation of India** (*supra*), in the instant case, amendment is prayed for bringing the changes made over the suit property during pendency of the suit i.e. subsequent events are sought to be brought on record. The defence of the defendants that the amendment relates to a time barred claim will have to be decided in the course of

trial of the suit by framing appropriate issues. The defendants will have opportunity to defend the added para.

7. As such, this court would partly allow the application and permitted the applicant to add para 4A and para 2, however, the original para 2 and para 4 are not permitted to be deleted. The amended paras may be added as para 4A and 2A.

8. Although, the amendment is allowed, the defendants would be entitled to file the supplementary written statement to the added paras and would be entitled to contest the amended pleadings on the bar of limitation and on any other ground, which the defendants wish to take.

9. With the above observations, the writ petition is disposed of.

[ARUN R. PEDNEKER, J.]

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