



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8596 OF 2024

. Pradip s/o Ramgopalji Rathi,
Age: 76 Years, Occu.: Agri.,
R/o. Lulla Nagar, Kondhva, Pune
Through: His Power of Attorney Holder-
Rajesh Ghanshyamdasji Lathi,
Age: 56 Years, Occu.: Business,
R/o. Near Central Hanuman,
Old Bhaji Mandi, Latur,
Dist. Latur

.. Petitioner
(Ori. Plaintiff)

Versus

. Rajkumar @ Rajabhau s/o. Baburuwan Patil,
Age: 52 Years, Occu.: Agri.,
R/o.: Bhadi, Tq. & Dist.: Latur

.. Respondent
(Orig. defendant) / Non-applicant

...
Advocate for Petitioner: Smt. Anjali Dube
Advocate for Respondent: Mr. V. G. Kodale
...

CORAM:	ARUN R. PEDNEKER, J.
DATE:	24.09.2024

JUDGMENT:

1. Heard.

2. Rule. Rule returnable forthwith. With consent of the parties, the matter is taken up for final hearing.

3. By the present petition, the petitioner challenges order dated 02.04.2024, passed on Exhibit 24, in Regular Civil Suit No.555 of 2022, wherein the application filed by the plaintiff / Petitioner for amendment of the plaint under Order 6 Rule 17 of the CPC is rejected.

4. The case of the plaintiff in brief is as under.

A] The plaintiff filed the Regular Civil Suit No.555 of 2022 before the learned Civil Judge, Senior Division, Latur for possession of the encroached area. In the plaint, the suit property is mentioned as Block No.5 admeasuring 03 Hectar 28 Are as per 7/12 extract.

B] In the amendment application, it is contended that, an area of land admeasuring 0 Hectar 42 Are adjacent to the land of Omkar Pratishtan and to the east side of the suit land was subtracted from ownership of the plaintiff by way of acquisition and the mutation entry no.791 was sanctioned on 24.07.2022. As per the mutation entry no.791, the name of the plaintiff is mutated on 7/12 extract to the extent of 2 Hectar 86 Are and, hence, the plaintiff filed application for amendment of the plaint.

C] It is contended by the plaintiff that the amendment does not change the nature of the suit, so also, the boundaries of the land owned by the plaintiff does not change. The amendment is necessary in the interest of justice.

D] The said amendment is objected to by the defendant contending that the plaintiff had knowledge about the acquisition in the year 2013 and the award was sanctioned in the year 2019, mutation was also effected on 24.07.2022, moreover, the plaintiff has withdrawn the compensation prior to the filing of the suit. The plaintiff has full knowledge about deduction of land. The plaintiff has intentionally and falsely shown his area as 03 Hector 28 Are and the plaintiff has falsely shown encroachment on 7 Are land.

It is contended that the affidavit evidence of the plaintiff is filed. It is stated that his land to the extent of 3 Hector 28 Are has been obtained by him as per the court decree.

It is further contended that measurement officer TILR has given false map, because at the time of measurement ring road from the land has gone under the road, but he has not shown the above said ring road and area of ring road in the measurement also.

E] Considering the rival contentions, the learned trial court observed that the plaintiff has filed the suit for recovery of possession and mesne profit. The plaintiff has instituted the suit on 27.07.2022 and he has mentioned suit property as 3 Hector 28 Are land out of total 10 Hector 40 Are land from Block No.5. The suit property is admeasuring 3 Hector 28 Are. The suit is now fixed for hearing and the evidence affidavit of the plaintiff has come on record. The trial court has observed that perusal of 7/12 extract of Gat No.5 shows that the area of Block No.5 has been acquired by the Government on 24.07.2022. Area of Block No.5 has been subtracted from the western side. As per the pleadings of the plaintiff encroachment has been made from east-north corner of the suit property. It is further observed that, although, acquisition is taken prior in point of time and the plaintiff was having knowledge of the same he has not mentioned anything about land acquisition and exact position of area of land block no.5 till the date of application by way of amendment. Prior to hearing he has not disclosed this fact to the court. Plaintiff has not taken any steps before framing of issues. The court held that the plaintiff has not given any reasonable explanation as to why the application for amendment could not be made before

commencement of the trial and the proposed amendment completely and fraudulently changes the nature of the stand taken or it would completely set-up a new cause. Despite the knowledge of the land acquisition and award in respect of the suit property, the plaintiff has remained silent till 2024. The court observed that the basic rule of every litigation is that right of the parties must be determined on the basis of the date of filing of the suit. However, court can take notice of subsequent events in order to shorten litigation, to preserve, protect and safeguard rights of both the parties and subserve the ends of justice. The events which is sought to be brought on record are not subsequent. The court has refused to entertain the application for amendment of the plaint and rejected the same.

5. Challenging the above order passed by the trial court it is contended by the learned counsel for the petitioner that the amendment does not change the nature of the suit as the encroachment is on the eastern side whereas the acquisition of the property is taken place from the western side. On pleading of acquisition being taken on record, the area of the plaintiff would stand reduced of the western side to the extent of acquisition. The original boundaries and the original property would remain the same for the purpose of demarcation of the property. No prejudice would

be caused to the respondent. The amendment would merely explain the case of the plaintiff.

6. Per contra, learned counsel for the respondent / defendant submits that the petitioner was fully aware of the acquisition and that he has failed to bring it to the notice of the court the fact of acquisition. The learned counsel further submits that the map produced by the plaintiff is erroneous and prejudice would be caused to the respondent / defendant in the event the amendment is allowed.

7. The learned counsel for the respondent relies upon the Judgment of the Hon'ble Apex Court in the case of **Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka and others, AIR 2013 SC 3188**, wherein the Hon'ble Apex Court has held that belated amendment on the undisputed fact was not permissible in the facts of that case, where the plaintiff therein was aware of transaction before filing of the suit and no relief was sought against the transaction at the time of filing of the suit. It was sought to be introduced by the amendment under Order 6 Rule 17 of the CPC at a late date. The Hon'ble Apex Court in the above Judgment has held that it was not permissible to do so.

8. Having considered the rival submissions, it is required to be noted that Order 6 Rule 17 of the CPC deals with the amendment of pleadings and it is quoted below for ready reference:-

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his 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:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

9. It is a settled law that the court would be liberal in granting amendment, unless injustice would be caused to the other party, if, the amendment is allowed or that the amendment is not necessary to decide the controversy in issue.

10. The Hon’ble Supreme Court in the case of ***Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another, Civil Appeal No. 5909 of 2022 dated 01.09.2022***, has explained the position of law on amendment of pleadings as under:

“70. (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 pin-pointedly 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 & Ors.*, 2022 SCC OnLine Del 1897)”*

11. The Hon'ble Supreme Court has held in the above case of *Life Insurance Corporation of India (supra)* that the amendment application has to be allowed if the amendment is required for

effective and proper adjudication of the controversy between the parties and that the amendment does not result in injustice to the other side. Unless the amendment changes the nature of the suit or introduce a time barred claim or changes the nature of the suit and that the court should not be hypertechnical in it's approach in allowing amendment to pleadings.

12. In the amendment application, the plaintiff has contended as under:

“03) That, an area of land 00-H.42-R. adjacent to the land of “Omkar Pratishthan” & to theeast side of suit land. That, an area of 00-H.42-R. was subtracted from ownership of the plaintiff, vide mutation entry No.791 sanctioned on 24/07/2022, after filing of suit. Above referred area of 00-H,0.42-R. is acquired for ring road Part-III and accordingly an entry to that, effect was made in 7/12 extract of land block No.05, of Bhatkheda, as such now the area standing in the name of plainitff is 02-H. 86-R. Therefore, suitable amendment in the plaint is necessary to be made in the plaint in Para No. 01 of the plaint.

04) That, on page No.02 Para No. 01, Line No. 02 & 03, after the wrods to the extent of, by deleting “03-H. 28-R.”, area of “02-H. 86-R.” is necessary to be inserted.

05) That, the boundaries of land owned by plaintiff does not charge due reduction in area. The area under encroachment for which the suit is filed and possession

is sought, is not effected & not require any change, therefore, the plaintiff does not require any change in the map annexed to be plaint.”

13. In the instant case, the petitioner has filed the suit for recovery of possession and mesne profits of the encroached portion admeasuring 7 Are situated at north-west corner of block no.5 of Bhatkheda. The petitioner has also produced a map with the suit indicating the encroached portion. The petitioner has also given the boundaries of the suit property owned by him along with boundaries.

14. It is also contended that, at the time of filing of the suit, in the 7/12 extract and 8A extract, land owned by the plaintiff / petitioner reflected the total area of 3 Hector 28 Are and that the acquisition proceedings were carried out in respect of the land of the plaintiff to the extent of 42 Are; yet the entry of the same was not reflected in the government record. Subsequent to the filing of the suit the revenue record in respect of block no.5 was corrected on 24.07.2022 vide mutation entry no.791. In view of the subsequent development, the application was moved under Order 6 Rule 17 to make amendment to the plaint.

15. It is to be noticed that the alleged encroachment is caused by the defendant on the northwest side and the land of the plaintiff is acquired from the east-west side, as such, bringing on record the correct measurement of area the boundaries towards the east-west side do not change the nature of the suit or the original boundaries of the suit property. Only the acquired lands would stand deducted on the east-west side to the extent of acquisition. As regards the boundary of the petitioner's land from the side of the encroachment remains the same.

16. Thus, for effective decision on the suit the amendment is necessary. No prejudice can be caused to the defendant because no new facts are introduced and only the suit property is explained with greater details. Prima faice, the encroachment part does not change.

17. Thus, considering the law laid down, the trial court has erred in holding that the suit is filed in the year 2022 and the proposed amendment is sought in the year 2024 without any explanation as to why the amendment could not be made at the commencement of the trial. It is further erroneously observed that the amendment completely and fundamentally changes the nature of the stand taken by the party concerned or it puts of a completely

new cause. This observations by the learned civil judge to my mind is erroneous. The amendment does not make any new case nor does it alter the boundaries towards the side of the encroachment. The amendment would explain the suit property in a better way and the basic boundaries would remain the same.

18. Prima facie, there is no prejudice caused to the defendant. As such, the amendment application ought to have been allowed. The amendment application is accordingly allowed. The petitioner is permitted to carry out the amendment on production of this order within a period of two (02) weeks. The defendant / respondent would be permitted to defend the amendment.

19. The writ petition accordingly stands allowed. Rule is made absolute in above terms.

[ARUN R. PEDNEKER, J.]

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