



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.13936 OF 2019

1. Madhavrao s/o Nagorao Mirase,
Age: 50 years, Occu: Agri.
R/o.: Talang, Taluka: Hadgaon,
District: Nanded
2. Digambar s/o Nagorao Mirase,
Age: 30 years, Occu.”: Agri.,
R/o.: Talang, Taluka: Hadgaon,
District: Nanded

.. Petitioners

Versus

1. Shankar s/o Kishan Mirase,
Age: 40 years, Occu.: Agri.,
R/o.: Talang, Taluka: Hadgaon,
District: Nanded
2. Pandurang s/o Nagorao Mirase,
Age: 60 years, Occu.: Agri.,
R/o.: Talang, Taluka: Hadgaon,
District: Nanded
3. Nagesh s/o Madhavrao Mirase,
Age: 20 years, Occu.: Agri.,
R/o.: Talang, Taluka: Hadgaon,
District: Nanded
4. Anil s/o Pandurang Mirase,
Age: 37 years, Occu.: Agri.,
R/o.: Talang, Taluka: Hadgaon,
District: Nanded
5. Dipak s/o Pandurang Mirase,
Age: 37 years, Occu.: Agri.,
R/o.: Talang, Taluka: Hadgaon,
District: Nanded

.. Respondents

...
Advocate for the Petitioners : Mr. Shailendra S. Gangakhedkar
Advocate for Respondent No.1 : Mr. S. B. Ghatol Patil
...

CORAM : ARUN R. PEDNEKER, J.
DATE : 31st JANUARY, 2024

ORDER:

1. Heard.
2. By the present petition the petitioners are challenging the impugned order dated 11.07.2019, passed in Exhibit 45 by the Joint Civil Judge Junior Division, Hadgaon in Regular Civil Suit No.20 of 2017, whereby the application seeking amendment in written statement filed by the petitioners / defendants resorting to Order 6 Rule 17 of the CPC was rejected.
3. The respondent no. 1 / plaintiff namely Shankar Kisan Mirase filed a Regular Civil Suit No.20 of 2017, on 23.01.2017 seeking perpetual injunction against the defendants / petitioners and other persons thereby claiming that the defendants be restrained from causing obstruction in property no. 114, admeasuring East-West 30 Feet, South-North 40 Feet, totally admeasuring 1200 square feet. The petitioners were served with the suit summons and they entered into appearance and file written statement on 10.04.2017, thereby denying all the

contentions of the plaintiff. When the suit was at the stage of evidence of the plaintiff, the petitioners sought for amendment in the written statement in para 16, contending that the amendment to written statement will make the pleadings more specific and precise.

4. The application was resisted by the plaintiff. The trial court by order dated 11.07.2019 was pleased to dismiss the application for amendment moved by the petitioners / defendants. The trial court held that the contents of the proposed amendment is already narrated in written statement. It held that if the proposed amendment is allowed delay will be caused and would be prejudicial to the plaintiff and the court held that the proposed amendments are not necessary and not essential for the decision of the suit and dismissed the application.

5. Aggrieved by the above order, the present writ petition is filed. In the writ petition, this court by order dated 20.11.2019, while issuing notice had observed at paras 4 and 5 as under:-

“4. I find that the proposed amendment is based on a judgment delivered by the appellate Court on 14.7.2015 in RCA No.81 of 2010, in which, petitioner No.1 himself was the original plaintiff/appellant.

5. Considering the above, though this petition need not be entertained as regards the elaborate description in the proposed paragraphs 1 to 8 and 10, the proposed paragraph No.9 along with the two sketch maps would render assistance to the trial Court and would not amount to

altering the cause of action. This petition can, therefore, be entertained to this extent.”

6. In pursuance of the order passed by this court dated 20.11.2019, the learned counsel for the petitioner has only made submissions to the extent of amendment in para 9 along with the two sketch maps, which is quoted below as under:-

“१. हे कि, प्रतिवादी क्र. १ ह्याचे हक्कात मा. जिल्हा न्यायालयाची डिग्री असून त्या डिग्रीनुसार प्रतिवादी क्र. १ माधवराव मिरासे ह्याची ग्रामपंचायत घर क्र. ९२ ज्याची लांबी पूर्व पश्चिम ९३ फूट आणि रुंदी उत्तर दक्षिण ६६ फूट चतुःसीमा पूर्वेस ग्रामपंचायत घर क्र. ९१, पश्चिमेस रस्ता, उत्तरेस रस्ता आणि दक्षिणेस ६ फुटाचा रस्ता, मौजे तालंग ता. हदगाव जी. नांदेड ह्या घरजागेची मालकी जाहीर केली असून त्या दाव्यातील प्रतिवादींना पाबंद केले आहे.”

7. Mr. Shailendra S. Gangakhedkar, learned counsel for the petitioners submits that in terms of para 9 quoted above and the amended sketches given, it is apparent that there is no change in the defence of the petitioners, and only the boundaries as depicted in the written statement are better described and that it would render assistance to the court in rendering the Judgment and no prejudice would be caused to the plaintiff. The learned counsel for the petitioners has relied upon in the cases of **Sushil Kumar Jain Vs. Manoj Kumar and another**, (2009) 14 SCC 38, **Kamlesh Gupta Vs. Mangat Rai and another**, (2020) 17 SCC 132, **Ganesh Prasad Vs. Rajeshwar prasad and others**, 2023 SCC OnLine SC 256.

8. Per contra, Mr. S. B. Ghatol Patil, learned counsel appearing for the respondent no.1 / plaintiff submits that the amended pleadings are not necessary for the just decision of the case and he has relied upon the cases of **Mehboob-Ur-Rehman (dead) through L.Rs. Vs. Ahsanul Ghani, 2020 (2) Mh.L.J. 58, Vaishnavi Sai Shri Mahalaxmi Jagdamba Shikshan Sanstha, Nagpur Vs. Purva Vidarbha Mahila Parishad, Nagpur, 2022 (1) Mh.L.J. 519, Sandeep s/o Vijayrao Ingle Vs. Aniruddha Chaitram Ramteke and others, 2022 (4) Mh.L.J. 771, Ariz Kohli vs. Tehzeeb Kohli, 2023 (1) Mh.L.J. 270, so also, Eknath Nivrutti Hegadkar (since deceased) through his Legal Heirs Mainabai Lakshman Tanjave and others vs. Aagatrao Dyanu Ghodke (since deceased) through his Legal Heirs Kondibai Aagatrao Ghodake and others, 2022 (1) Mh.L.J. 319.**

9. Having considered the rival submissions and by comparing both the maps given in the plaint, which is at page 34 of the petition and the application for amendment at page 40 of the petition, it is apparent that the map given in the amendment application gives more detailed map. However, there is no change in the dimensions or the boundary marks, only, a detailed map is given in the amended application and the pleadings in the earlier suit are sought to be brought on record.

10. However, the question is, whether amendment can be permitted in the written statement in terms of Order 6 Rule 17 of the

CPC, at the stage of evidence. The trial is at the stage of cross examination of the plaintiff witnesses. In the case of **Sushil Kumar Jain Vs. Manoj Kumar and another**, (2009) 14 SCC 38, the Hon'ble Supreme Court at par 13 and 14 has held as under:-

“13. At this stage, we may remind ourselves that law is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle.

“15...Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action.”

(See Baldev Singh v. Manohar Singh, (2006) 6 SCC 498, SCC p. 504, para 15.) Similar view has also been expressed in Usha Balasaheb Swami v. Kiran Appaso Swami, (2007) 5 SCC 602.

14. It is equally well settled that (SCC p. 609, para 22) in the case of an amendment of a written statement,

“the courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed.”

11. Aslo, in the case of **Ganesh Prasad Vs. Rajeshwar prasad and others**, 2023 SCC OnLine SC 256, while dealing with amendment of pleadings, the Hon'ble Supreme Court, at para 36, has observed as under:-

“36. In one of the recent pronouncements of this 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, the position of law has been explained 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 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 & Ors., 2022 SCC OnLine Del 1897)”

12. In the Judgment of the *Life Insurance Corporation of India*, which is also referred in the above Judgment of **Ganesh Prasad** (*supra*), the Hon’ble Supreme Court has held that the prayer for amendment is

generally required to be allowed only 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, where the amendment may be justifiably allowed, where it is intended to rectify the absence of material particulars in the plaint. Ordinarily 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. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The Hon'ble Supreme Court has held that the Plaintiffs and Defendant are entitled to amend the plaint, written statement or file an additional written statement. It is, however, subject to an exception that by the proposed amendment, an opposite party should not be subject to injustice and that any admission made in favour of the other party is not withdrawn. All amendments of the pleadings should be allowed liberally which are necessary for determination of the real controversies in the suit provided that the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken.

13. Thus, the law on the subject is that the court should be liberal in allowing the amendment in pleadings and as regards the

written statement the court should be still more liberal in comparison to the amendment to the plaint. In applying the above law to the facts of this case that where the suit is at the stage where only the affidavit in evidence of the plaintiff is filed and that the pleadings at para 9 along with the maps only makes the map produced with the written statement more substantial and more detailed without bringing in any further defence or without withdrawing admission given in the written statement, the same should be ordinarily allowed.

14. Coming to the Judgments placed by the learned counsel for the respondent, the Hon'ble Supreme Court in the case of **Mehboob (*supra*)**, at para 18, the Hon'ble Supreme Court has held that the High Court did not committed any illegality in rejecting the prayer belatedly made by the plaintiff for amendment of the plaint. It held that the averments and proof of readiness and willingness to perform his part of the contract has been the threshold requirement for a plaintiff who seeks the relief of specific performance. In the amendment the plaintiff sought to fill in the lacuna in his case, only at a belated stage, as such, the court felt that the late attempt is made to amend the plaint.

15. However, in the instant case, the suit is merely at the stage where the plaintiff has given only affidavit in his evidence. Thus, the

Judgment of the **Mehboob** (*supra*) is not applicable to the facts of this case.

16. Similarly, in the case of **Vaishnavi** (*supra*), this court has held that the proposed amendment of plaint after 11 months of the written statement of the respondent. The proposed amendment cannot be said to be an attempt to place on record an alternative or inconsistent plea, but, a wholly contradictory and new case, seeking to resile from a categorical position taken in the original pleadings and, as such, the amendment was not bonafide and was rightly rejected. However, the said Judgment is not applicable to the facts of the present case.

17. In the case of **Sandeep** (*supra*) this court reached to conclusion that the amendment is not necessary, as such, the court rejected the prayer for amendment. In the case of **Ariz Kohli** (*surpa*), this court held that the amendment is to be allowed if it is necessary to determine the real question in controversy. The amendment sought in that case was held to be completely alien to the one which was sought in the backdrop of the pleading set out in the petition filed by the wife. This court has rejected the amendment application.

18. So also, in the case of **Ekmath** (*supra*), this court in that case held that the amendment sought for was for declaratory relief of title and

the same could not have been allowed and granted in view of Article 58 of Limitation Act because the original suit was a suit simpliciter seeking injunction and after a period of 8 years, after arising of cause of action the same cannot be permitted.

19. However, the judgments relied upon by the learned counsel for the respondent are not relevant and applicable to the instant case, as in the instant case, the suit is at the stage where the plaintiff has given his affidavit in evidence.

20. The para 9 only specifies the boundaries of the property in detail and it only further clarifies the map already given without changing its external boundaries or area of the property. The map given will help in the decision of the suit. There is no new plea sought nor the evidence given by the plaintiff that would any way be adversely affected if the amendment to the extent of para 9 along with description and the maps is allowed to be amended and brought on record. In any event, it is also to be appreciated in terms of the Judgment of **Sushil Kumar (supra)** that the court should be more liberal in allowing the amendment to the written statement. Since, no prejudice would be caused to the plaintiff, the amendment is allowed with costs of Rs.2000/-, to be paid to the plaintiff in the trial court. Thus, the impugned order passed by the trial court is set aside and the amendment to the extent of para 9 along with

sketch maps of application for amendment is allowed. The amendment to be carried out within two (02) weeks of uploading of this order.

21. The Writ Petition stands accordingly disposed of.

[ARUN R. PEDNEKER, J.]

marathe