

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4800 OF 2024

Yogesh Rajaram Jadhav

...Petitioner

Versus

Amar Ramkrishna Shanbhag and
Anr.

...Respondents

...

Mr. Bhushan Deshmukh *with Mr. Vedant Bende for the
Petitioner.*

CORAM : SANDEEP V. MARNE, J.

DATED : 24 APRIL 2024.

PC:

1. Challenge in the present petition is to the order dated 20 January 2024 passed by the Court of Small Causes at Mumbai allowing the application filed by the Plaintiff for amendment of the plaint.

2. I have heard Mr. Deshmukh, learned counsel appearing for the Petitioner and have considered the submissions canvassed by him.

3. Perusal of the application for amendment would indicate that Plaintiff desires to correct an error in the pleading where

Defendant's father Mr. Rajaram Baburao. Jadhav was erroneously pleaded as dead when in fact he was alive. Plaintiff apparently discovered the mistake after filing of the written statement. Secondly, the Plaintiff wants to rely upon Surrender Affidavit dated 23 January 2009 allegedly executed between Rajaram Baburao Jadhav. Thirdly, Plaintiff wants to state the built up area of the tenanted premises as well as alleged unauthorised extension in addition to the carpet area of both portions described in the plaint. According to Mr. Deshmukh all these additions to the plaint would make change in the nature of the Suit.

4. I am unable to agree. Mere indication of built up area of the tenanted premises and alleged unauthorised extension for the purpose of Plaintiff's claim for *mesne* profit cannot change the nature of the Suit. Secondly, Plaintiff's attempt to correct inadvertent error in describing Rajaram Baburao Jadhav to be dead would also not amount to changing the nature of the Suit. The Plaintiff would otherwise be entitled to rely upon the Surrender Affidavit dated 23 January 2009 during the course of trial of Suit. Reliance on additional document would again not change nature of Suit. The Apex Court in ***Life Insurance Corporation of India vs Sanjeev Builders Private Limited, AIR 2022 SC 4256*** has laid down principles about amendment of pleadings. If the Trial Court has permitted amendment of the plaint, this Court would not be justified in reversing the order, especially when the nature of amendment does not alter the course of litigation. The amendment appears to be necessary for the purpose of determining real question

of controversy between the parties. I find no reason to interfere in the order passed by the Trial Court. The Writ Petition is devoid of merits and is accordingly dismissed.

5. Time to file additional written statement shall stand extended for a period of two weeks.

SANDEEP V. MARNE, J.