

possession. He submitted that the proposed amendment about added subject matter property is time-barred. He submitted that the impugned order, in terms records that the Respondents are seeking amendment taking cue from the defense raised by the Petitioners in their written statement.

5. On the other hand, learned Counsel for the Respondents supported the impugned order. It is submitted that the suit property which was initially included in the plaint viz. the suit property 1(b) i.e. OH 60R portion out of Gut No. 147 at Village Nirawagaj, Tal Baramati is the same property on which there is construction of 5 rooms which is sought to be added as suit property 1(d). He submitted that if the pleadings are carefully considered, claim of the Respondents under the amendment cannot be termed as time-barred *per se*. He submitted that hearing of the suit has not started and issues are not yet framed. In such circumstances, the Trial Court has allowed the amendment and no interference is necessary.

6. I have considered the submissions carefully. Perusal of the original plaint shows that OH 60R out of the Gut No. 147 was already the subject matter as suit property 1(b). The Petitioners in their written statement contended that in this suit property, they have their construction, which are owned and possessed by them. It is common ground before the Court that the parties are related to each other and by way of an amendment, the

Respondents are seeking relief of possession in respect of structures existing on the suit property 1(b).

7. Learned Counsel for the Petitioners has relied upon the judgment of the Hon'ble Supreme Court in case of *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another*¹ and contended that in view of the guidelines in paragraph 70 (iv) & (x) thereof, the proposed amendment as allowed under the impugned order cannot be permitted. Perusal of those guidelines indicate that the Hon'ble Supreme Court has observed that time-barred claim should not be allowed to be introduced as amendment and the amendment which changes the nature of the suit, so much as to set up an entirely new case foreign to the case set up in the plaint, should not be allowed.

8. As already indicated above, the amended pleadings in my opinion, do not change the nature of the suit so as to set up an entirely new case, foreign to the case set up in the plaint. Admittedly the structures now sought to be incorporated as suit property 1(d) are on suit property 1(b) and therefore the prayers are connected to original suit property. Also claim made by the Respondents in the amendment can not be said to be time-barred merely on the basis of the pleadings as they stand today, both the original as well as

¹ 2022 SCC OnLine SC 1128

amended. In that view of the matter, the said judgment does not advance the case of the Petitioners.

9. The Trial Court, after finding that the amendment is necessary for proper adjudication between the same parties in respect of the same subject matter property or construction thereon, has allowed the amendment. In my opinion, the pleadings as sought to be amended also do not change the nature of the suit. Therefore there is no error on the face of the record or perversity in the impugned order.

10. In light of the aforesaid factual and legal position, there is no merit in the Petition and same is accordingly dismissed.

11. However in the facts of this case, the cost imposed under the impugned order is increased to Rs.5,000/- to be deposited by Respondents in the Trial Court within a period of 4 weeks from today. The Petitioners are at liberty to withdraw the same.

(M. M. SATHAYE, J.)