



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1529 OF 2016

Sukhdeo s/o Ramrao Sapkal

...PETITIONER

VERSUS

1. Yenubai w/o Dhondiram Naval
2. Tejrao s/o Ramrao Sapkal
3. Sarjerao Ramrao Sapkal
4. Smt. Sonabai w/o Ramadas Kakade
5. Smt. Shahubai w/o Laxman Suste
6. Smt. Tolabai w/o Madhavrao Bhalakar
7. Tulasabai w/o Tanaji Lokhande

...RESPONDENTS

Mr. D.P. Palodkar, Advocate for the petitioner

Mr. S.N. Lute, Advocate for respondent No. 1

Mr. C.S. Deshmukh, Advocate for respondents No. 2 to 7

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CORAM : MANJUSHA DESHPANDE, J.

DATE : 27th FEBRUARY, 2025

ORDER :

1. The petitioner has challenged the order dated 16.12.2015 passed by learned Civil Judge, Junior Division, Sillod, below Exhibit-22 in Regular Civil Suit No. 57 of 2015, whereby application filed by respondent No. 1 under Order 6 Rule 17 of Code of Civil Procedure has been allowed.

2. The petitioner is original defendant No. 3 in Regular Civil Suit No. 57 of 2015 filed by respondent No. 1 for perpetual

injunction thereby restraining the defendants in the suit from entering into suit properties i.e. Gut No. 125 to the extent of 72R, Gut No. 127 to the extent of 62 R and Gut No. 162 to the extent of 57 R, situated at Mhasla (khurd), Tq. Sillod, Dist. Aurangabad. The petitioner, respondent No. 1 and respondents No. 2 to 5 are brothers inter se. In the suit for perpetual injunction it is stated by respondent No. 1 that her father namely Bhagaji s/o Trimbak Sapakal has expired on 25.04.1975 and since death of her father, she being legal heir, is owner and possessor of above mentioned suit properties. The suit properties are received by her from her father as per her share in the ancestral properties. After the death of her father, she in possession of suit properties till today. After the death of her father, her uncle i.e. father of respondents No. 2 to 7, filed an application for effecting mutation entries, which the respondent No. 1 herein has opposed. She, thereafter, on the instructions given by revenue authorities applied for heirship certificate and accordingly, heirship certificate has been issued in her favour in respect of property bearing Gut No. 125 to the extent of 72 Are, Gut No. 127 to the extent of 62 R and Gut No. 162 to the extent of 57R. However, the matter of effecting mutation entries is still pending with the revenue authorities. It is specifically contended

by respondent No. 1 that since death of her father she is cultivating the properties mentioned above. It is the case of Respondent No. 1 that the petitioner along with respondent No. 2 to 7 are trying to obstruct her possession. The cause of action has arisen on 28.02.2015, when defendants disturbed and obstructed her and did not allow her to work in her agricultural lands. Therefore, she has filed suit for perpetual injunction on 05.03.2015.

3. Learned advocate for the petitioner submits that on receiving summons, defendants No. 1 to 7 have caused their appearance and filed their written statement cum say on 20.06.2015. In the written statement, it has been categorically stated that respondent No. 1 had previously filed suit bearing R.C.S. No. 87/2015 which was titled as Yenubai vs. Ramrao. The suit filed by respondent No. 1 has been rejected by the Trial Court. The decision of the Trial Court was challenged in appeal before District Court by filing R.C.A. No. 254/1987. The appeal of respondent No. 1 has been allowed. Father of petitioner approached this Court by filing Second Appeal No. 315/1988. During pendency of second appeal, compromise was arrived at between the parties, which was accepted and second appeal has

been disposed of in terms of compromise. In the second appeal, respondent No. 1 has specifically undertaken that after receiving an amount of Rs. 20,000/- she will not claim any right whatsoever on the suit properties, the defendants along with their father would be sole owner and possessor of the properties. It was also recorded by Court that respondent No. 1 is married and residing with her husband who also holds property. The demand draft was handed over to respondent No. 1. The compromise was recorded by this Court in presence of the parties on 27.03.1991.

4. Learned advocate for the petitioner submits that though respondent No. 1 had relinquished her rights over the suit properties, all of a sudden now she has filed suit seeking perpetual injunction thereby restraining petitioner and others from entering the properties which are already relinquished by her in the year 1991 itself. After filing of written statement cum say, respondent No. 1 has filed an application under Order 6 Rule 17 of CPC for amendment of her pleadings. In her application, she has stated that after the defendants have filed written statement, she realised that the fact about relinquishment of share by plaintiff is not disclosed in her plaint. Therefore, she

wants to disclose it in plaint by adding certain paras in the plaint. The suit is still at the stage of Exhibit-5, therefore, it is claimed that she may be allowed to carry out necessary amendment by adding certain paras.

5. In the application, respondent No. 1 come with a different story. According to her, her father was the owner and possessor of suit properties and after death of her father, she is residing with her husband out of her village, at her matrimonial place which is at Rahimabad, Tq. Sillod, Dist. Aurangabad. During her absence in the village, father of defendants No. 1 to 7, in the suit were cultivating the lands belonging to her, but after some time they have stopped giving her any share in the crop, therefore, she had filed suit for declaration and possession of said lands, which was dismissed on 30.09.1987. Against the dismissal of suit, she had preferred appeal and the appeal was allowed by District Court. Against the decision in appeal, father of defendant No. 1 to 7 preferred appeal before this Court. Before this Court, she had relinquished her rights over the properties as per the compromise which is arrived between herself and her uncle by accepting Rs. 20,000/- on 19.03.1991. It is further stated by her that in the year 1995, father of

defendants told her that if she wants any share in the properties, she will have to return money with interest. Accordingly, she has returned amount of Rs. 25,000/- in presence of two witnesses on 03.05.1995 and since then she is in possession of properties, since father of defendants has returned the properties. After the demise of father of defendants, defendants started obstructing possession of respondent No. 1 and also opposing her application for mutation entry. Therefore, she wants to add these facts in her plaint, which are necessary in view of contents of written statement filed by defendants.

6. Application of Respondent No. 1 was opposed by petitioner by filing say to the application. According to the petitioner, he has categorically stated that respondent No. 1 in order to substantiate the suppression of material facts wants to carry out amendment. In fact it was her duty to come before the Court with clean hands. It was well within her knowledge that she has entered into a compromise by accepting Rs. 20,000/- before this Court. The contention of respondent No. 1 that father of petitioner has given her offer that if she wants to establish her rights over the suit properties, she will have to return the amount which she has accepted by returning Rs. 25,000/-

received by towards compromise along with interest is totally incorrect, false and fictitious. No such incident has ever taken place. Neither she has returned the amount nor possession has ever been handed over to her. The contents and story of respondent No. 1 in the application are false, frivolous and contrary to the record.

7. By order dated 16.12.2015, Civil Judge, Junior Division, Sillod has allowed the application on the ground that it seems that respondent No. 1 wants to add few things which were remained to be added due to inadvertence. The stage of the suit being at very initial stage and considering that issues are yet to be framed, the Trial Court has taken liberal approach and has allowed the application of respondent No. 1, subject to payment of costs of Rs. 500/- to the defendants.

8. It is the contention of petitioner that though it is settled legal position that applications for amendment of plaint are to be liberally granted in order to avoid multiplicity of proceedings and in order to full and finally decide proceedings between the parties. At the same time it also needs to be appreciated that in certain circumstances liberal approach of the Court does not deserve consideration. Though, the Trial Court

has observed that no prejudice would be caused to the defendants if the amendment is allowed, said observation is in fact erroneous for the reason, the amendment is going to change the very nature of the suit. From the proposed amendment it can be discerned that it suffers from suppression of facts. Respondent No. 1 has suppressed about previous proceedings which have culminated into the compromise. Though she has relinquished her claims for the suit properties, and knowing fully well she has come out with a totally different story claiming, possession of suit property from the date of death of her father. This fact has not been taken into consideration by the Trial Court. If her concocted story about return of land is accepted the very complexion of suit would change. Merely in order to fill in the gap in her story, she claims to be in possession of the property, which is contrary to the written statement filed by her, she has filed the application seeking amendment of plaint to cover up her conduct of suppression of material facts. Though, she is claiming that she was returned back the suit property, she has not taken any steps for recalling the order of compromise which is recorded before this Court. Therefore, according to learned advocate for the petitioner order passed by learned Civil Judge, Junior Division, Sillod needs to be quashed and set aside.

9. Per contra, learned advocate for respondent No. 1 has supported the order passed by Trial Court. It is his contention that, after the compromise between the parties before this Court uncle of respondent No. 1 has offered her suit lands in exchange of return of the money which is received by her in the compromise along with interest. It is claimed that she has returned the money in presence of two witnesses on 03.05.1995, since then she is in possession of the suit properties. Since the suit itself is simplicitor for injunction, due to inadvertence she could not disclose the earlier history of litigation between parties inter se. But when defendants have filed their written statement and disclosed earlier litigation, therefore, she found it necessary to make appropriate averments in her plaint by incorporating the earlier history of litigation between the parties.

10. According to her, it is on account of her inadvertence, necessary details remained to be averred in the plaint, but due to objections raised in the writ statement it has become necessary in order to deal with the contentions in the written statement. Since the suit itself is at very nascent stage, no prejudice will be caused to petitioner if the application is allowed,

since issues are yet to be framed. Therefore, the Trial Court after taking into consideration the settled legal position of law, referring to various judicial pronouncements of High Courts as well as Hon'ble Supreme Court, on the application made under Order 6 Rule 17, directing to adopt a liberal approach while deciding such applications for amendment, the application is allowed by the Trial Court. It is his submission that, since issues are yet to be framed, no prejudice will be caused to the petitioner as he is at liberty to lead evidence after framing of issues. It is further submitted by learned advocate that according to the order passed on Exhibit-22, he has already carried out necessary amendment and it forms part of the record of the suit. Therefore, the order passed by Trial Court does not deserve any interference.

11. Learned advocate for respondent No. 1 relies on decision of Hon'ble Supreme Court in *Dinesh Goyal @ Pappu vs. Suman Agarwal (Bindal) and Ors.*, arising out of Special Leave Petition (Civil) No. 30324/2019 decided on 24.09.2024, wherein Supreme Court has taken into consideration all the earlier judgments wherein decisions have been rendered issuing guidelines/principles, while dealing with application for

amendment in pleadings. In the decision supra, the Hon'ble Supreme Court, once again reiterated that, in order to minimize the delay in judicial process and prevent multiplicity or multiple avenues of litigation the object of Order 6 Rule 17 needs to be liberally construed. According to learned advocate for respondent No. 1 the order impugned is squarely covered by the decision referred supra.

12. Learned advocate for petitioner also relies on the observations of Hon'ble Supreme Court in the same judgment. Learned advocate for the petitioner has drawn my attention to the reliance placed by Hon'ble Supreme Court on the decision in ***Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr.*** Para 11.2 of judgment, which is reproduced in the judgment supra which reads thus:

11.2 Over the years, though numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17. Recently, this Court in Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr, after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles:-

(i) All the 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.

(ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.

(iii) Amendments, while generally should be allowed, the same should be disallowed if-

(a) 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.

(b) The amendment does not arise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)

(c) The amendment completely changes the nature of the suit;

(d) The prayer for amendment is malafide,

(e) By the amendment, the other side should not lose a valid defence.

(iv) Some general principles to be kept in mind are-

(I) The court should avoid a hyper-technical approach; ordinarily by liberal, especially when the opposite party can be compensated by costs.

(II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint to introduce an additional or a new approach.

(III) The amendment should not change the cause of action, so as to set up an entire new case, foreign to the case set up in the plaint.

13. According to learned advocate for the petitioner

along with the grounds on which the amendment of pleadings is required to be allowed, the Hon'ble Supreme Court has also culled out the principles on which the amendment should be disallowed. Learned advocate for the petitioner places reliance on Clause (III) in para 11.2 of the judgment.

14. I have heard the respective parties and after going through the record and impugned order it can be discerned that plaintiff has filed suit for perpetual injunction on the basis of possession which she is claiming to be received through her father and is in continuous possession after the death of her father. According to her, defendants have obstructed her possession after death of her father.

15. The plaint merely discloses the description of properties and manner in which respondent No. 1 came in possession of the suit properties. Though, respondent No. 1 discloses that, she has filed proceeding for obtaining heirship certificate in respect of suit lands, she has not disclosed about history of litigation between her and defendants. The history of earlier litigation has been purposely suppressed by her. It is evident from the compromise arrived at between parties before this Court that respondent No. 1 has accepted Rs. 20,000/- for

relinquishing her rights over the suit properties from father of petitioner. This Court while disposing the second appeal on the basis of compromise has recorded presence of parties and recorded that amount of Rs. 20,000/- was accepted by respondent No. 1 for relinquishing her claim over the suit properties. In spite of decision rendered wherein she has received an amount in compromise and she has relinquished her right over the suit properties, by suppressing the same, respondent No. 1 has filed proceedings seeking perpetual injunction with totally a new case claiming that she in continued possession of suit property since death of her father. Contrary to her own averment in the plaint, she now wants to introduce new by the amendment claiming that though she accepted the amount in the compromise, after the compromise on the offer of her uncle i.e. father of petitioner she has returned an amount of Rs. 25,000/- in presence of two witnesses on 03.05.1995, since then she is in possession of the suit properties. Admittedly, the suit is at initial stage, however, fact remains that respondent No. 1 is trying to introduce a totally new case. The very nature of the suit will be changed if the amendment is allowed. Though, it is well settled that applications under Order 6 Rule 17 are to be liberally construed in order to avoid multiplicity of proceedings,

but while allowing such applications it is also necessary to consider whether such amendment is necessary to determine the real question of controversy between parties and if such amendment is allowed the same would change nature of the suit. In the present case, though the facts were well within the knowledge of respondent No. 1, she has purposely suppressed it and only after the history of earlier litigation was brought on record by petitioner in the written statement, present application has been filed by respondent No. 1, with the intention to fill in the gap and to justify suppression of facts. From the pleadings and documents placed on record, it is evident that though respondent No. 1 has arrived at a compromise in the year 1991 itself and has accepted an amount towards relinquishment of her right over suit properties by filing R.C.S. No. 57/2015 she has taken a taking somersault from the earlier proceedings which are confirmed and have been terminated resulting into compromise. Irrespective of the compromise, she has suppressed it and has taken the stand that she is continuously in possession of suit properties. She claims to be in continuous possession based on her rights which are flowing as legal heirs of her father. Hence, if the amendment is allowed the very complexion of litigation would be changed.

16. It also needs to be appreciated that respondent No. 1 has not filed any proceedings for recall or modification of order whereby she has entered into compromise, though she is claims to have returned the money and has been handed over possession. Hence, in view of the fact that respondent No. 1 is trying to bring a totally new case by justifying her conduct of suppression of facts, the amendment is not necessary for the effective and proper adjudication of controversy between the parties. The present case stands squarely covered by the general principles which have been culled out in the judgment of *LIC vs. Sanjeev Builders Pvt. Ltd* (supra). Hence, in my opinion, order passed by Trial Court deserves to be quashed and set aside.

17. In the result, I proceed to pass following order:

ORDER

- (i) Writ Petition is allowed.
- (ii) Order dated 16.12.2015 passed by learned Civil Judge, Junior Division, Sillod, below Exhibit-22 in Regular Civil Suit No. 57 of 2015 is hereby quashed and set aside.

(MANJUSHA DESHPANDE, J.)