



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

946 WRIT PETITION NO. 1471 OF 2024

NIMBA ARJUN MALI
VERSUS
YAMUNABAI VASANT PATIL AND OTHERS

...
Advocate for the Petitioner : Mr. Girish S. Rane
Advocate for Respondent no.1 : Mr.Patil Mangesh G.
Advocate for Respondent nos.2 and 7:Ms.Kirti Deshpande h/f Mr.M.M.
Bhokrikar

...
CORAM : ROHIT W. JOSHI, J.

DATED : 18th June, 2025

PER COURT :

1. The present petition takes exception to order dated 03.01.2024 passed by the learned Civil Judge, Junior Division, Erandol on application at Exhibit-169 in Regular Civil Suit No.9/2011, thereby allowing the application for amendment of plaint after commencement of trial. Respondent No.1 is the original plaintiff. She is sister of the petitioner, who is original defendant no.1. Respondent Nos.2 to 7 are the defendant nos.2 to 7 in the said suit, who have purchased different portions of the suit property from defendant no.1.

2. Respondent No.1/Plaintiff has filed suit for partition and separate possession against petitioner – defendant no.1, her brother and defendant nos.2 to 7-the purchasers. Perusal of plaint averments will indicate that although prayer for partition and separate possession

is made on the ground that the plaintiff has share in the suit property along with defendant no.1 and that the transactions whereby defendant no.1 has unilaterally sold some of the suit properties to defendant nos.2 to 7 are not legal, a formal prayer for cancellation of sale deeds is not made in the plaint. In these circumstances, plaintiff-respondent no.1 filed an application for amendment of plaint vide Exhibit-169 on 04.12.2023 in order to incorporate challenge to the sale deeds.

3. It is undisputed that trial of the suit commenced in the year 2019 itself and present application is filed after a period of around five years after commencement of trial.

4. Despite serious objection to the amendment by which the sale deeds executed by petitioner-defendant no.1 in favour of respondent nos.2 to 7 is sought to be challenged, the learned trial court has allowed the application for amendment, vide impugned order dated 03.01.2024.

5. The learned counsel for the petitioner contends that the learned civil court has completely lost sight of proviso to Order VI Rule 17 of the Code of Civil Procedure, which according to him, prohibits the civil court to allow application for amendment after commencement of trial, save and except in case where the litigant is able to make out a

case of due diligence as contemplated under proviso to Order VI Rule 17. Referring to the judgment in the matter of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and anr.*** reported in ***AIR 2022 SC 4256***, he contends that a right which is vested with passage of time cannot be divested by allowing the application for amendment of plaint and permitting plaintiff to incorporate a prayer, which is barred by limitation. He also places reliance on judgment in the matter of ***Basavaraj Vs. Indira and ors.*** reported in ***(2024) 3 SCC 705***, wherein it is held that a statement by plaintiff that the relief which was initially not incorporated in the plaint was not so incorporated due to oversight cannot be accepted as meeting the requirement of due diligence as per proviso to Order VI Rule 17 of the CPC. He also places reliance on a judgment of this Court in the matter of ***Kalabai Vithoba Shinde Vs. Shewantabai Ganpat Thavare and others*** reported in ***AIR Online 2023 Bombay 2197*** for the same proposition that oversight even on account of illiteracy cannot be considered as due diligence within the meaning of proviso to Order VI Rule 16 of the CPC.

6. Per-contra, the learned advocate for the respondent-plaintiff places reliance on judgment dated 23.04.2024 of ***Gujarat High Court*** in the matter of ***Chunibhai Haribhai Gajera and others Vs. Hasmukhbhai Bhikhabhai Patel and others*** (Special Civil Application No.23525/2022) to contend that where the amendment is sought

before commencement of trial, the Court should be liberal in its approach while dealing with application for amendment and intention should be to adjudicate the lis on merits rather than harping on technicalities. He also places reliance on judgment of this Court namely of *Bharat Petroleum Corporation Ltd., Vs. Precious Finance Investment Pvt. Ltd.* reported in *2006(6) BCR 510* to contend that normally the application for amendment should not be rejected on the ground of limitation and point of limitation can be kept open for adjudication on merits.

7. Having perused the plaint and application for amendment and on hearing the rival submissions, this Court is of the opinion that the plaint averments clearly state that respondent no.1 alone was not entitled to sell the suit properties to other defendants as has been done by him. In view of the above, the plaintiff has sought relief of partition and separate possession with respect to the suit properties including the properties which are sold by defendant no.1 to other defendants. The purchasers are admittedly arrayed as defendants in the suit. The substantive prayer in the suit is for partition and separate possession. The plaintiff is not a party to the disputed sale deeds. It is therefore obvious that the sale deeds will not be binding on her. Sale Deeds will bind the plaintiff only if the defendant no.1 is successful in establishing the defence that the plaintiff has relinquished her share in the suit

property in his favour.

8. One of the issues, which will fall for consideration before the learned trial court is, as to whether the sale deeds will be binding on plaintiff although she is not party to the same and further whether it was necessary for her to challenge the sale deeds to which she is not party. Since the petitioner is not a party to sale deeds, it may not be necessary for her to challenge the same. However, since the subject matter of the petition is only an order allowing amendment, it will be appropriate that this point is decided on merits while adjudicating the suit. The issue of limitation in the present case, therefore, is not a question which can be answered straight away in the light of stand taken in the pleadings. In that view of the matter, keeping the point of limitation open, in the considered opinion of this Court, no prejudice will be caused to the petitioner by allowing the application for amendment.

9. Since the substantive prayer of the suit is for partition and separate possession, it will be appropriate that the order allowing the amendment is maintained keeping all points in respect to binding efficacy of sale deeds on the defendant no.1 open.

10. The learned counsel for the petitioner prays that the trial court be directed to frame issue on the point of limitation. The learned trial court to consider recasting the issues in the light of amendment in the plaint and consequent amendment that the defendants may incorporate in the written statement.

11. The petition stands dismissed in the light of above observations.

[ROHIT W. JOSHI]
JUDGE

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