



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

WRIT PETITION NO. 4567 OF 2024

Gopal Shivajirao Amnawar .. Petitioner
Versus
Kasturbai Baburao Madane and others .. Respondents

Shri Balbhim R. Kedar, Advocate for the Petitioner.
Shri Avinash A. Phad, Advocate for the Respondent Nos. 1 and 2.
Shri R. B. Deshmukh, Advocate for the Respondent Nos. 4 and 5.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR ORDERS ON : 17.02.2025
ORDER PRONOUNCED ON : 21.02.2025

FINAL ORDER :

. Heard both sides finally at the admission stage with the consent of the parties.

2. The petitioner/the original defendant No. 4 in R.C.S. No. 64 of 2010, assailing order dated 22.03.2024 passed below Exhibit 150 by the Trial Court permitting the respondent Nos. 1 and 2/plaintiffs to amend the plaint.

3. The respondent Nos. 1 and 2 have filed R.C.S. No. 64 of 2010 for partition and separate possession in respect of land gut No. 264. The petitioner was not party to the suit. The respondent Nos. 4 and 5 alienated their undivided share to the extent of 46R to the petitioner by registered sale deed dated 14.03.2012. The petitioner was impleaded as a defendant No. 4. He filed written statement on 16.03.2013 raising specific plea in

paragraph No. 11 that ancestral house at Ghansargaon, Tq. Renapur and land purchased by the respondent Nos. 4 and 5 situated at Chincholi were not brought in common hotch potch. Additional issue was framed on 07.12.2023 in respect of non joinder of the properties. After recording of evidence of both sides application Exhibit 150 was filed on 15.02.2024 U/O 06 Rule 17 of the Code of Civil Procedure (for short "C. P. C.") by the respondent Nos. 1 and 2, which is allowed by the impugned order.

4. Learned counsel for the petitioner submits that application Exhibit 150 was filed after ten years from commencement of trial. The suit was fixed for final arguments. There is want of due diligence and the application is against proviso to Order 06 Rule 17 of the C. P. C. He would further submit that absolutely no reasons are assigned for seeking the amendment belatedly. The facts of the proposed amendment were within their knowledge. He would further submit that a time barred claim is sought to be introduced by the proposed amendment. The proposed amendment nullifies the defence taken in para 11 of the written statement. It is an attempt to fill up the lacuna.

5. He would further submit that the findings recorded by the trial Judge are unsustainable. He is relying on the following judgments of the Supreme Court and High Court :

- I Vidyabai and others Vs. Padmalatha and another reported in (2009) 2 SCC 409.
- II Kishor Raghunath Pande and Vijaya Raghunath Pande Vs. Narendra Durlabhji Shah reported in 2012(3) Mh.L.J. 279.

- III Gangubai Baban Kadam Vs. Vidya Vijay Joshi reported in 2015(2) Mh.L.J. 444.
- IV Order dated 21st January, 2025 in Writ Petition No. 317 of 2022 in the matter of Vaijnath Maroti Rakh Vs. Harichandra Sitaram Pardeshi and another.

6. The contesting respondent Nos. 1 and 2 opposed the submissions of the petitioner. They would submit that the proposed amendment is necessary to decide the controversy. They support the impugned order. It is submitted that to avoid multiplicity of litigation, it is permissible to amend the pleadings. Reliance is placed on the following judgments of the High Court.

- (i) Life Insurance Corporation Vs. Sanjeev Builders Pvt. Ltd. and another reported in 2022 SCC Online SC 1128.
- (ii) Dela Gurudal Vanjari Vs. Uddhal Govardhan Rathod reported in 2012(3) Mh. L. J. 940
- (iii) Abhay Arondekar Vs. Helen Prisca Correia and others reported in 2014(2) Mh.L.J. 105.

7. The parties adduced evidence and the matter was posted for arguments. The respondent Nos. 1 and 2 submitted application Exhibit 150 on 15.02.2024 at the fag end of the trial. Obviously, such application was after commencement of the trial and unless the plaintiffs prove that inspite of due diligence the plaintiffs could not have raised matter before the commencement of trial, it was not permissible to allow the application. It is also matter of record that written statement was filed by the petitioner on 16.03.2013 raising plea in paragraph No. 11.

Thereafter additional issue was cast on 07.12.2023.

8. Application Exhibit 150 does not spell out specific reason for not filing such application at earlier point of time. Only it was mentioned that it was inadvertent mistake. The proposed amendment is to add present respondent No. 6-Mangalabai as party defendant and to add the properties in the subject matter of the plaint namely (A) Land gut No. 187 to the extent of 80R situated at village Chincholi, (B) Gram Panchayat house No. 243, (C) Gram Panchayat House No. 490.

9. Under normal course of circumstances I would have quashed the impugned order. The proviso of Order 06 Rule 17 of the C. P. C. is with a specific object. It is to shorten the litigation and speed up the disposal of the suits. Learned counsel Mr. Kedar has rightly brought to the notice of this Court the pronouncement of the Supreme Court in the matter of Salem Advocate Bar Association Vs. Union of India reported in (2005) 6 SCC 344 and more specifically paragraph No. 43 of the judgment. Said judgment is referred in the matter of Vidyabai and others Vs. Padmalatha and another (supra). However, considering following peculiar circumstances, I am not inclined to quash the order impugned :

- (a) It is suit for partition ;
- (b) All the properties of joint family which can be part of subject matter need to be brought in common hotch potch ;
Similar is the case with the party sought to be impleaded i.

- e. respondent No. 6. She is being necessary party;
- (c) Otherwise, the consequences of multiplicity of litigation cannot be ruled out ;
 - (d) Application for amendment to plaint is sought to be resisted by the petitioner/defendant No. 4, who is the purchaser of undivided share of the respondent Nos. 4 and 5. His interest in the suit extends to the share purchased by him. Therefore, in a way he has limited interest to contest the suit ;
 - (e) The proposed amendment is necessary for deciding real controversy between the parties. The rival pleas of the parties are open to be adjudicated during the course of trial. It would be open to the petitioner to raise defence of limitation and mis-joinder of parties by permitting him to file additional written statement ;
 - (f) The delay in filing application Exhibit 150 has caused prejudice to the petitioner, which can be compensated by enhancing cost already imposed by the Trial Court.

10. The petitioner relied on the judgment in the matter of Vidyabai and others Vs. Padmalatha and another (supra). I have gone through para Nos. 11, 12 and 14. In that matter application for amendment to the written statement was filed belatedly. It was rejected by the Trial Court, being aggrieved writ petition was filed, which was allowed. Against that order matter had reached the Supreme Court. The Supreme Court quashed the order of the High Court. That was not a suit for partition. The application seeking amendment was not contested by the

purchaser. Considering difference in the facts, the ratio cannot be made applicable.

11. In the case of Kishor Raghunath Pande and Vijaya Raghunath Pande Vs. Narendra Durlabhji Shah (supra), the application seeking amendment to written statement was rejected and the defendant was before the High Court. His writ petition was dismissed. It is distinguishable on facts and cannot be made applicable. Next reliance is on the judgment in the matter of Gangubai Baban Kadam Vs. Vidya Vijay Joshi (supra), in which the petitioner was original plaintiff, whose application seeking amendment was rejected by the Trial Court. It was suit for declaration in respect of sale deed. In that factual context observations were made in paragraph Nos. 16, 17 and 22. It is also distinguishable on facts and it is not applicable.

12. Similar is the case with the next judgment in the case of Vaijnath Maroti Rakh Vs. Harichandra Sitaram Pardeshi and another (supra). In that case application for amendment to the written statement was moved belatedly after about one year. It was allowed by the Trial Court, which was challenged before the High Court. High Court allowed the writ petition. The said ratio also cannot be made applicable considering the difference in the facts and situation.

13. The respondents relied on the judgment of the Supreme Court in the matter of Life Insurance Corporation Vs. Sanjeev Builders Pvt. Ltd. and another (supra). The appellant before the Supreme Court was original defendant in a

suit for specific performance of contract. Chamber summons was taken out in the year 2017 seeking amendment to the plaint. It was allowed by the Single Judge and confirmed by the Division Bench. It is relevant to refer to paragraph Nos. 29 and 30 of the judgment, which are as follows :

“29. In *Pankaja & Anr. v. Yellappa (dead) by lrs. & Ors.*, (2004) 6 SCC 415, this Court held that it was in the discretion of the court to allow an application under Order VI Rule 17 of the CPC seeking amendment of the plaint even where the relief sought to be added by amendment was allegedly barred by limitation. The Court noticed that there was no absolute rule that the amendment in such a case should not be allowed. It was pointed out that the court's discretion in this regard depends on the facts and circumstances of the case and has to be exercised on a judicial evaluation thereof. It would be apposite to notice the observations of this Court in this pronouncement in extenso. The principles were laid down by this Court thus:

“12. So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held that the dominant purpose of allowing the amendment is to minimise the litigation, therefore, if the facts of the case so permit, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application.

13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the

period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

16. This view of this Court has, since, been followed by a three-Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board [(2004) 3 SCC 392]. Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice.

18. We think that the course adopted by this Court in Ragu Thilak D. John case [(2001) 2 SCC 472] applies appropriately to the facts of this case. The courts below have proceeded on an assumption that the amendment sought for by the appellants is ipso facto barred by the law of limitation and

amounts to introduction of different relief than what the plaintiff had asked for in the original plaint. We do not agree with the courts below that the amendment sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief.”

30. From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.”

14. A useful reference can be made to the law laid down by the Supreme Court in the matter of **Revajeetu Builders and Developers Vs. Narayanswamy and Sons and others** reported in *2009(6) All M.R. 986*. Para No. 67, which is reproduced as follows :

“67 On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether the application for amendment is bona fide or mala fide?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And
- (6) As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

15. It is apposite to further refer to the **judgment dated 27.09.2012 of the Supreme Court in the matter of Abdul Raheman Vs. Mohd. Ruldu and others in Civil Appeal No. 7043 of 2012**. Para No. 7 of the judgment reads as follows :

“7) It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that

in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

16. The parameters laid down by the Supreme Court in the matter of Revajeetu Builders and Developers Vs. Narayanswamy and Sons and others (supra) in paragraph No. 67.6 and the observations in para No. 30 of Life Insurance Corporation Vs. Sanjeev Builders Pvt. Ltd. and another (supra) impel me to examine submission of Mr. Kedar, learned advocate for the petitioner. He adverted my attention to Article 110 of the Limitation Act, 1963 to make out a point that by proposed amendment time barred claim is sought to be introduced. As per Article 110 of the Limitation Act, the limitation prescribed is of twelve years and the period begins to run when the exclusion becomes known to the plaintiff. In the present case written statement was filed on 16.03.2013. Thereafter, additional issue was framed on 07.12.2023. Application Exhibit 150 was presented on 15.02.2024. Application Exh. 150 is within twelve from the filing of written statement. Apparently, submission of the learned counsel cannot be approved.

17. The petitioner has raised a plea that suit is bad for not bringing all the properties of the joint family in common hotch potch. A issue to that effect has also been framed. This is in my opinion is a technical plea. This goes to the root of the matter also, therefore, it will be appropriate to permit the parties to litigate on it in a full fledged trial. Therefore, the proposed amendment is necessary.

18. I am fortified by the guidelines issued by the Supreme Court in the matters of Revajeetu Builders and Developers Vs. Narayanswamy and Sons and others and Abdul Raheman Vs. Mohd. Ruldu and others (supra) in maintaining the impugned,. The proposed amendment is necessary to decide the controversy. The multiplicity of litigation is also avoided by permitting respondents to amend the plaint.

19. I, therefore, pass following order.

O R D E R

- a. The writ petition is dismissed, however, the respondent Nos. 1 and 2 shall pay total cost of Rs. 10,000/- (Rs. Ten thousands only) which would include the cost earlier paid to the petitioner, within a period of two (02) weeks from today, which shall be condition precedent.
- b. The petitioner shall be at liberty to file additional written statement.
- c. The Trial Court shall decide the suit as expeditiously as possible.

[SHAILESH P. BRAHME, J.]

bsb/Feb. 25