



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4497 OF 2023

Babulal Pratap Rathod And Another

VERSUS

Shri Mohan Chenya Rathod Vanjari And Others

...

Advocate for Petitioners : Mr. M.S. Kulkarni

AGP for Respondents no.2,3 : Mr. P.D. Patil

Advocate for Respondent 1 : Mr. A.D. Sonar

...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : August 07, 2025

FINAL ORDER :-

1. The petitioners impugn the order dated 3.3.2023 passed by Joint Civil Judge S.D. Dhule, below Exhibit-70 in R.C.S. No.661 of 2012, thereby application filed by petitioners seeking amendment in the plaint is rejected.

2. Learned advocate appearing for the petitioners/plaintiffs submits that petitioners and respondent no.1 are relatives. Respondent no.1 was owner of land gat no.4/1 admeasuring 1H 19R situated at Satarpada, Tq. Sakri, District Dhule. He entered into agreement to sale land to the petitioners. Accordingly, on 3.3.1998 agreement to sale is executed for consideration of Rs.3.00 Lakhs. Consideration amount was paid on the same date and possession was also

parted. Name of petitioner no.1 was mutated in record of rights. When petitioner no.1 transferred suit land in the name of his son i.e. petitioner no.2 and mutation entry no.89 was certified to that effect, respondent no.1 raised challenge to the mutation entry and started obstruction to the possession of petitioners. Therefore, petitioners filed R.C.S. No.661 of 2012 seeking decree of perpetual injunction against respondent no.1.

3. Respondent no.1 filed written statement and denied alleged agreement to sale. Issues were framed. Evidence of parties was recorded and when matter was posted for final arguments, petitioners filed an application below Exhibit-79 seeking amendment of plaint, particularly, to incorporate relief of specific performance of contract in pursuance to the agreement to sale. Said application was opposed by respondent. Hence, Trial Court rejected the same vide impugned order.

4. Mr. Mukul Kulkarni, learned advocate appearing for petitioners vehemently submits that application filed by petitioners seeking amendment in the plaint has been erroneously rejected giving reason that it seeks to incorporate

relief, which is barred by limitation and, secondly, the amendment sought at belated in stage. According to Mr. Kulkarni, a copy of written agreement to sale is on record. The same is impounded during the course of trial. Respondents are denying execution of agreement dated 3.3.1998. When the suit was filed, respondents had obstructed to peaceful possession of plaintiffs, therefore, limited prayer for relief of perpetual-injunction was incorporated. However, in view of the stand taken by respondent in suit, it was found necessary to incorporate the prayer for specific performance of contract. Eventually, application was filed for incorporation of necessary directions in that regard. He would submit that whether relief claimed is time barred or not, that cannot be adjudged at this stage or amendment cannot be refused on that count, that can be issued at the trial. According to Mr. Kulkarni, no prejudice would be caused to respondents, if permission to amend the plaint is rejected.

5. Per contra, learned advocate appearing for respondents supports the impugned order.

6. Having considered submissions advanced by learned advocates appearing for respective parties, it can be

observed that plaintiffs instituted suit in the year 2012 seeking relief of perpetual injunction in respect of the suit land contending that respondent has executed agreement to sale dated 25.3.1998 and put him in possession.

7. Respondent/defendants appeared in the suit and filed written statement dated 13.12.2013 and specifically denied execution of the agreement to sale dated 3.3.1998 so also parting of possession in favour of petitioners/plaintiffs. The suit proceeded with aforesaid pleadings. Evidence of parties is recorded and at the stage of arguments, application seeking amendment to incorporate the prayer for specific performance of contract, is sought.

8. In view of the aforesaid factual background, it would be apposite to refer to the guidelines rendered by the Supreme Court of India in case of **Life Insurance Corporation Vs. Sanjeev Builders** reported in (2022) 16 SCC 1, paragraph no.70, reads thus :-

70. Our final conclusions may be summed up thus : -

- (i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

- (ii) All 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.
- (iii) The prayer for amendment is to be allowed
 - (I) if the amendment is required for effective and proper adjudication of the controversy between the parties, and
 - (ii) to avoid multiplicity of proceedings, provided
 - (a) the amendment does not result in injustice to the other side,
 - (b) 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 and
 - (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).
 - (iv) A prayer for amendment is generally required to be allowed unless
 - (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,
 - (ii) the amendment changes the nature of the suit,
 - (iii) the prayer for amendment is malafide, or
 - (iv) by the amendment, the other side loses a valid defence.
 - (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hyper-technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.
 - (vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

- (vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.
- (viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.
- (ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.
- (x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.
- (xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi & Ors.*, 2022 SCC Online Del 1897).

9. In light of the aforesaid exposition of law, it can be observed that, plaintiffs had knowledge that defendant has specifically denied execution of agreement to sale and specific defence is incorporated in the written statement filed in the

year 2013. Therefore, if, petitioner wanted to seek the relief of specific performance of contract, the cause of action had arose to him immediately when defendant shown his hostile attitude towards agreement to sale. At least, when defendant put specific pleadings denying execution of the agreement to sale, petitioners could have sought the amendment to seek relief of specific performance of contract, however, he proceeded with simplicitor suit for perpetual injunction without claiming any relief of specific performance of contract and at the fag end, when matter was posted for arguments, application below Exhibit-79 is filed.

10. In this background, proviso to Rule 17 of Order VI would come into play, which stipulates that amendment after commencement of the trial cannot be allowed unless the court comes to the conclusion that despite of due diligence, the party could not have raised the matter before commencement of the trial. In the present case, application Exhibit 79 is absolutely silent on aforesaid aspects. There is nothing to find out explanation for non-seeking amendment before commencement of the trial.

11. Second aspect of the matter is that, limitation for seeking relief of specific performance of the contract will have to be counted from the date when defendant denied execution of the sale deed.

12. In the present case, in 2013 itself, respondent/defendant put up his defence and denied execution of the agreement to sale, whereas application for amendment was tendered in the year 2023 i.e. almost after ten years.

13. In that view of the matter, conclusion drawn by the Trial Court that proposed amendment is barred by law of limitation and permitting such time barred amendment would divest right accrued in favour of the defendant cannot be faulted.

14. In the result, there is no merit in the writ petition. Writ Petition stands **rejected**.

(S. G. CHAPALGAONKAR)
Judge

aaa-(f).

.....