



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

923 WRIT PETITION NO. 12271 OF 2025

**PANDURANG MOHANRAO VAKTE & OTHERS
VERSUS
SURESH BABANRAO PAWAR**

...
Advocate for the petitioners : Mr.N.D.Sonavane

...

**CORAM : ARUN R. PEDNEKER, J.
DATE : 07.10.2025**

P.C. :

1] The learned counsel for the petitioners submits that the plaintiff–respondent filed suit for injunction restraining the defendants–petitioners from obstructing peaceful possession of the suit property and the same is based on the gift deed in favour of the plaintiff. He further submits that thereafter the petitioners-defendants filed written statement and disputed the gift deeds and also raised defence that the suit simplicitor for injunction is not maintainable and also filed counter claim seeking declaration that the gift deeds are not binding on them. He further submits that on 01.02.2022, the respondent –

plaintiff filed application below Exh.28 for amendment to the plaint for correcting the boundaries of the suit property and the said application was allowed by the trial Court. He further submits that thereafter the respondent plaintiff filed another application below Exh.58 seeking amendment to the plaint and sought amendment of declaration of ownership on the basis of gift deed and by order dated 17.06.2025 the trial Court has allowed the said application. He further submits that the application for amendment to the plaint ought not to have been allowed for two reasons that earlier on 01.02.2022 the plaintiff filed an application for amendment seeking correction in the boundaries of the suit property and counter claim was already on record by that time and thereafter on 08.10.2024 another application for amendment was filed by the plaintiff at Exh.58 and the same is allowed by the trial Court by order dated 17.06.2025, as such, the impugned order is illegal. He further submits that the suit is at the stage of evidence of the plaintiff and that the trial has commenced and that the amendment application ought not to have been allowed by

the trial Court as the plaintiff has not shown due diligence in amending the plaint.

2] While allowing the amendment application, by order dated 17.06.2025 the trial Court has observed at para no.7 as under :

7] In view of law laid down by Hon'ble Supreme Court in Anthulla's case, when cloud is raised about the ownership of the suit, the suit for injunction simplicitor is not maintainable in law. Here, the case at hand, the defendants/plaintiffs in counter-claim have challenged gift deed and plaintiff's ownership of suit property. Thus, in view of dispute raised by the defendants, the proposed amendment is necessary to avoid multiplicity and for final adjudication of the suit. If proposed amendment is allowed, it will not change the nature of the suit and cause prejudice to the right of the defendants.....

3] The law of amendment is crystallized in the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & anr.** reported in **2022 LiveLaw (SC) 729** and in the said judgment, the Hon'ble Supreme Court at para no. 70 has held that as under :

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 negated.

(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 hypertechnical 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 pinpointedly 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)

4] Considering the above judgment, the delay in applying for amendment alone is not a ground to disallow the prayer. The trial Court has allowed the amendment to avoid multiplicity of proceedings as the suit simplicitor for injunction cannot be proceeded after the defendant has filed its written statement claiming right over the property. The amendment is justified. As such, I see no error in the impugned order passed by the trial Court. The Writ Petition is dismissed.

**[ARUN R. PEDNEKER]
JUDGE**

DDC