

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9793 OF 2017

1. Ramdas Sitaram Zaware
Age: 64 Years, Occu: Agri.
R/o: Walki, Taluka and
District Ahmednagar
2. Pandurang Sitaram Zaware
Age: 69 Years, Occu: Agri.
R/o: Vasunde, Taluka Parner.
District Ahmednagar
3. Kisan Jagannath Date
Age: 54 Years, Occu: Agri.
R/o: Vasunde, Taluka Parner,
District Ahmednagar.

..Petitioners

Versus

Namdao Kondiba Zaware
Since deceased Per L.Rs.

- 1-A. Sarubai Namdeo Zaware
Age: 66years, Occu: Household,
R/o: Vasunde, Taluka Parner,
District Ahmednagar
- 1-B. Chandrakala Balasaheb Rahokale
Age: 48 years, Occu: Household,
R/o: Wadgaon Savtal, Taluka Parner,
District Ahmednagar
- 1-C. Dadabhau Namdeo Zaware
Age: 45 years, Occu: Agriculture,
R/o: Mandve Khurd, Taluka Parner,
District Ahmednagar
- 1-D. Shirish Namdeo Zaware
Age: 40 years, Occu: Agriculture,
R/o: Vasunde, Taluka Parner,
District Ahmednagar
- 1-E. Charushila Ramdas Pardhi

Age: 26 years, Occu: Household,
R/o: Vasunde, Taluka Parner,
District Ahmednagar.

..Respondents

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Advocate for Petitioners : Mr. S.S. Bora
Advocate for Respondent Nos.1A to 1E : Mr. V.D. Sonawane & Mr. A.V.
Sonawane

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : AUGUST 05, 2025

PRONOUNCED ON : AUGUST 08, 2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with consent of parties.
2. The petitioners/original defendants impugn order dated 10.07.2017 passed by learned Civil Judge Junior Division, Parner in Regular Civil Suit No.485 of 2008 thereby allowing application below Exhibit-43 permitting plaintiff to amend the plaint.
3. The respondent/plaintiff instituted Regular Civil Suit No.485 of 2008, seeking relief of perpetual injunction in respect of suit property bearing Gat No.1420. The plaintiff has further sought declaration that sale deed executed by defendant no.2 in favour of defendant no.3 is not binding on his rights. It is contention of plaintiff that his father namely Kondiba Zaware purchased suit land from father of defendant nos.1 and 2 under registered sale deed dated 10.02.1955. However in sale deed, Survey No.466/7B is wrongly mentioned instead of land Survey No.467/7B. According to plaintiff,

his father was continued in possession of suit land till his death. However, defendant no.2 sold northern side half portion of suit land to defendant no.3 and defendant no.1 is attempting to sale southern half portion of suit land to third party. Hence, cause of action arose to file the suit.

4. The petitioners who are defendants appeared before the Trial Court in response to suit summons contending that Survey No.467/7B was converted into Gat No.1420 during implementation of consolidation scheme in the year 1975. The name of defendants' father was recorded as owner of suit property and after his death in the year 1985, Mutation Entry No.1025 has been recorded entering name of defendant nos.1 and 2. According to them, present suit is filed only with an intention to harass the defendants.

5. In pursuance of pleadings, issues were framed. The plaintiff recorded his evidence. Thereafter, plaintiff filed an application below Exhibit-43 under Order VI Rule 17 of Civil Procedure Code seeking permission to amend the plaint and incorporate relief of declaration of ownership in respect of suit property. The application was opposed by petitioners/defendants. However, the Trial Court allowed the application vide impugned order dated 10.07.2017. Hence, this writ petition.

6. Mr. Bora, learned advocate appearing for petitioners assails the order of Trial Court on the ground that application for

amendment has been allowed after commencement of trial without considering the effect of proviso under Rule 17 of Order VI of Civil Procedure Code. He submits that plaintiff/respondent failed to aver that inspite of due diligence, he could not have sought amendment before commencement of trial. Mr. Bora would submit that powers of Court to permit amendment at any stage of proceeding has been curtailed by proviso. However, the impugned order is passed without giving due importance to legislative intent. In support of his contentions, he relies upon the observations of Hon'ble Supreme Court in case of *M. Revanna Vs. Anjanamma (Dead) by L.Rs. And Ors reported in (2019) 4 SCC 332*.

7. Per contra, Mr. Sonawane, learned advocate appearing for respondents would submit that the proposed amendment seeks to introduce the claim for declaration of ownership without adding anything in the pleading. According to him, necessary averments are already made in the plaint. However inadvertently, the relief of declaration was not sought. He would submit that although proviso to Rule 17 curtails absolute discretion of Court to some extent to allow amendment at any stage, the amendment can be allowed once it is found necessary for determining the real controversy between the parties without causing prejudice or injustice to other-side. He would submit that the amendment sought was necessary to avoid multiplicity of litigation. In support of his contention, he relies upon

observations of Hon'ble Supreme Court in case of ***Abdul Rehman and Another Vs. Mohd. Ruldu and Others reported in (2012) 11 SCC 341.***

8. Having considered submissions advanced and perusal of record tendered into service before this Court, it can be observed that respondent/plaintiff instituted suit for relief of perpetual injunction against defendant no.1 and relief of declaration that sale deed executed by defendant no.2 in favour of defendant no.3 is not binding on the right of plaintiff. The plaintiff asserted ownership of land Survey No.467/7B (Gat No.1420) on the basis of registered sale deed dated 10.02.1955 executed by father of defendants i.e. Sitaram Zaware. The defendants by filing written statement refuted plaintiff's claim. The suit proceeded on the basis of aforesaid pleadings. The evidence of plaintiff no.1 was recorded wherein he admitted that his father is in possession of land Survey No.466 since the date of execution of sale deed. The application below Exhibit-43 seeking amendment of plaint was filed at the stage when evidence of plaintiff no.1 was over. In this background, it is apposite to make reference to guidelines laid down by Hon'ble Supreme Court in case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited reported in AIR 2022 SC 4256.*** In para 70, the final conclusions are recorded after considering various judgments on aforesaid aspect which 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, 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 and Ors., 2022 SCC OnLine Del 1897): (AIROnline 2022 Del 1797).”

9. The general principle that all amendments are to be allowed which are necessary for determining the real question in controversy remains as it is. Although proviso (vi) would put some fetters on powers of Court, generally amendments are to be allowed where it is intended to rectify the absence of material particulars in the plaint, in such cases delay in applying the amendment is not a ground to disallow the prayer. Further where amendment is sought only with respect to relief in plaint and is predicted on facts which are already pleaded in plaint, ordinarily the amendment is required to be allowed.

10. In present case, the amendment is proposed only for purpose of adding relief of declaration as to ownership. Pleadings in respect of such claim are already present in plaint. The plaintiff is not seeking to bring on record any new material or new pleadings that would prejudice the right of defendants. It is true that in application for amendment, no explanation is given as to why such relief was not sought at earlier point of time or before commencement of trial or

even there is no specific contention as to observance of due diligence. However, fact remains that for adjudication of dispute between the parties, the proposed amendment is necessary and even same is required to be permitted to avoid multiplicity of litigation.

11. Although Mr. Bora, learned advocate appearing for petitioners relies upon observations of Hon'ble Supreme Court in case of **M. Revanna (supra)**, the principle of law that satisfaction of Trial Court regarding necessity of amendment to effectively adjudicate the dispute between the parties is important. It is not shown by petitioners as to how allowing the amendment would prejudice their rights. Apparently, the nature of suit is not changed. In that view of matter, the discretion exercised by Trial Court appears to be in tune with the law laid down by Hon'ble Supreme Court in case of **Life Insurance Corporation of India (supra)**.

12. In result, writ petition sans merit, hence dismissed.

13. Rule is discharged.

(S.G. CHAPALGAONKAR, J.)