



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9702 OF 2024

Sitaram S/o Bhanudas Gore
Age : 64 years, Occ : Agri.,
R/o Malegaon, Tq. Badnapur,
Dist. Jalna.

..PETITIONER

VERSUS

1. Anil S/o Jagannath Magare
Age : 57 years, Occ : Pvt. Service,
R/o Plot no.5, near Ganga Bawadi,
Nandanwan colony, Chh. Sambhajinagar.
2. Sunil S/o Jagannath Magare
Age-52 years, Occ : Service,
R/o Plot no.5, Pawan nagar
near Samaj Mandir, HUDCO,
Chh. Sambhajinagar
3. Dipak S/o Jagannath Magare,
(Died)
Through Legal Heirs
- 3A. Jyotibai W/o Deepak Magare
Age : 39 years, Occ : Household,
- 3B. Nayan S/o Deepak Magare
Age : 27 years, Occ : Education,

Both R/o Arihant Nagar,
Waghmare Niwas, Chh. Sambhajinagar.
4. Padmabai W/o Uttam Chakre
Age-43 years, Occ :- Household,
R/o Shivaji Nagar, Chh. Sambhajinagar

..RESPONDENTS

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Mr. B.R. Kedar, Advocate for the petitioner.

Mr.Y.B. Bolkar, Advocate for Respondent Nos.1, 2, 3A, 3B & 4.

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CORAM : ROHIT W. JOSHI, J.
DATED : 13th AUGUST, 2025

JUDGMENT :

The petitioner, who is the plaintiff in Regular Civil Suit No.111/2012 pending on the file of the learned Civil Judge, Junior Division, Badnapur, is aggrieved by order dated 06.08.2024 passed by the said Court rejecting the application filed by him for amendment of plaint, vide Exhibit-147. The said suit is filed by the plaintiff seeking declaration that he has become owner of the suit property, which is an agricultural land by adverse possession and for injunction restraining the respondents/defendants from disturbing his possession over the suit property. The plaint is dated 28.08.2015.

2. It is the case of the plaintiff that he had entered into an agreement of sale with respect to the suit property with the father of the defendants late Jagannath Jairam Magare on 30.07.1994 and was placed in possession of the suit property in terms of the said agreement. He claims that although, the sale deed with respect to suit property could not be executed in his favour, he was cultivating the suit property

with the consent of deceased vendor Jagannath and was accordingly in lawful possession of the same. He raises contention that in terms of agreement dated 30.07.1994, the total sale consideration of the suit property was agreed at Rs.1,16,325/- out of which he had paid a sum of Rs.51,000/- and balance amount of Rs.65,325/- was agreed to be paid at the time of execution of the sale deed. He contends that when he had approached the vendor for execution of sale deed in August, 1996, the vendor suggested that the petitioner should take possession of the suit property and that the sale deed will be executed in due course. It is his case that his name is recorded in the possession column of the revenue record of the suit property from the year 2000. On this basis, the petitioner claims to be in adverse possession of the suit property from the year 2000. It is his contention that after a period of 12 years, he has perfected his title by adverse possession and has become absolute owner of the suit property.

3. The respondents/defendants filed written statement opposing the suit. The learned Trial Court framed the issues in the matter, vide Exhibit-45 on 09.07.2018. The

petitioner/plaintiff closed his evidence on 19.03.2024 by filing pursis Exhibit-109. Respondents/Defendants also closed their evidence on 23.04.2024, vide pursis at Exhibit-134. The final arguments of the respondents/defendants were also completed on 06.07.2024. At this stage, when the suit was posted for final arguments of the petitioner/plaintiff, the application for amendment of plaint came to be filed vide Exhibit-147. By the proposed amendment, the petitioner/plaintiff sought to incorporate the prayer for specific performance of contract with respect to agreement dated 30.07.1994 and also a decree for protection of possession in part performance of contract as per Section 53A of the Transfer of Property Act (hereinafter referred to as “the T.P. Act”). Necessary pleadings in support of these prayers were also sought to be incorporated. The defendants/respondents opposed the said application on the grounds that the application was filed at a belated stage; it had the effect of completely altering the nature of the suit and that the prayers sought to be incorporated were barred by limitation.

4. After hearing the parties on the said application,

the learned Trial Court was pleased to reject the application for amendment, vide order dated 06.08.2024, which is impugned in the present petition. The learned Trial Court has observed that the application was filed at a very belated stage when the arguments of the respondents/defendants were completed and the suit was posted for arguments of the petitioner/plaintiff. It is further held that the prayer sought to be incorporated in the suit could have been sought while the suit was filed. Likewise, the learned Trial Court has also observed that prayer for specific performance of contract was barred by limitation having regard to pleadings in the plaint that the defendants/respondents denied to execute the sale deed in favour of the petitioner/plaintiff on 04.04.2012 and the application for amendment was filed on 25.07.2024 after a period of over 12 years. It is also held that the relief of protection of possession in part performance and declaration of ownership by adverse possession could not go hand in hand since possession on the basis of agreement is permissive possession and ownership on the basis of adverse possession can be claimed only on the basis of hostile possession. The learned Trial Court has also made reference to the manner in which the petitioner/plaintiff had prolonged the suit while

leading his evidence. It is observed that the petitioner/plaintiff took almost one year for completing his evidence and after completion of his evidence made an application for appointment of Court Commissioner and thereafter also sought multiple adjournments at the stage when the suit was fixed for final arguments.

5. Mr. B.R. Kedar, learned Advocate for the petitioner/plaintiff submits that delay by itself cannot be a ground for rejection of application for amendment. It is his contention that the amendment is essential for deciding the suit on merits, and therefore, the same ought to have been allowed. He further contends that the nature of suit will not be altered since the possession is claimed on the basis of agreement of sale for the relief of protection of possession in part performance of contract as also declaration of ownership by adverse possession. As regards findings on the point of limitation, the learned Advocate contends that limitation being a mixed question of law and facts, the application for amendment could not have been rejected on the said ground. He has placed reliance on the following decisions :-

- (i) *L.N. Aswathama and another Vs. P. Prakash, 2009(13) SCC 229*
- (ii) *Shri Pandit Tukaram Dharrao (since deceased) by his L.Rs. and others Vs. Shri Shankar Raoji Dharrao (since deceased) by his L.Rs. and others , 2009(6) Mh.L.J. 854*
- (iii) *Dadabhau Shankar Ghodke and others Vs. Mohanlal Kanhyalal Agrawal and another, 2003(1) Mh.L.J. 446*
- (iv) *Maganlal Harilal Doshi and others Vs. Sarvadaman Mansukhlal Doshi & others, 2003(1) Mh.L.J. 390*
- (v) *Rafiq and another Vs. Munshilal and another, AIR 1981 SC 1400*
- (vi) *Surender Kumar Sharma Vs. Makhan Singh, 2009(10) SCC 626*
- (vii) The judgment dated 30.01.2015 in Civil Appeal No.1323/2025 in the matter of *Mount Mary Enterprises Vs. M/s Jivratna Medi Treat Pvt. Ltd.,* (SC)
- (viii) The judgment dated 07.02.2012 in Writ Petition No.8145/2011 in the matter of *Dela Gurudal Vanjari Vs. Uddhal Govardhan Rathod* (Bombay High Court, Aurangabad)
- (ix) The judgment dated 21.02.2025 in Writ Petition No.4567/2024 in Writ Petition No. 4567/2024 in the matter

of *Gopal Shivajirao Amnawar Vs. Kasturbai Baburao Madane and others* (Bombay High Court, Aurangabad).

6. Per-contra, Mr. Yogesh Bolkar, learned Advocate for the respondents contends that the application is rightly rejected by the learned Trial Court. He would submit that by the proposed amendment, entire nature of suit is sought to be altered; the prayer for specific performance is barred by limitation in view of the pleadings in the plaint itself; the application was filed at the stage when the final arguments on behalf of the respondents/defendants were completed and the matter was posted for arguments of petitioner/plaintiff; the application could not be allowed in view of bar under the proviso to Order VI Rule 17 of the Civil Procedure Code (hereinafter referred to as "the C.P.C.") and the conduct of the petitioner/plaintiff as is apparent on the face of record indicates his intention to prolong the suit. The learned Advocate for the respondents/defendants has placed reliance on the following decisions :-

(i) *D.S. Parvathamma Vs. A. Srinivasan, (2003)4 SCC 705*

- (ii) *Mohan Lal (deceased) Through his L.Rs. Kachru and others Vs. Mirza Abdul Gaffar and another, (1996)1 SCC 639*
- (iii) *Vijendra Kumar Goel Vs. Kusum Bhuwanla (Smt), (1997)11 SCC 457*
- (iv) *K. Raheja Constructions Ltd., Vs. Alliance Ministries and others, 1995 Supp (3) SCC 17*
- (v) *Radhika Devi Vs. Bajrangi Singh and others, (1996)7 SCC 486*
- (vi) *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Registered) Vs. Ramesh Chander and others, (2010)14 SCC 596*
- (vii) *M. Revanna Vs. Anjanamma (Dead) by Legal Representatives and others, (2019)4 SCC 332*

7. It is apparent from the reading of the plaint that the plaintiff/petitioner has specifically stated that after the agreement was entered in the year 1994, he was placed in possession of the property in the year 1996. He claims that the possession became adverse in the year 2000. On this basis, he has claimed declaration of ownership over the suit property by way of adverse possession on the basis of alleged hostile

possession for a period of over 12 years commencing from the year 2000. By the amendment, the petitioner/plaintiff sought to incorporate the reliefs of specific performance of contract and protection of possession under Section 53A of the T.P. Act. As regards the relief of specific performance of contract, it is clear from paragraph 5 of the plaint that according to the petitioner/plaintiff, the respondents/defendants had created obstruction to his alleged possession on 04.05.2012 and that in the month of June, 2012, they had allegedly informed the petitioner/plaintiff that since they are owners of the suit property, they will sell the same to any willing purchaser. This according to the petitioner/plaintiff is the cause of action for filing the suit. The application for amendment was filed on 25.07.2024 i.e. after a period of around 12 years from the date on which the respondents/defendants had refused to execute the sale deed in favour of the petitioner/plaintiff. This according to Article 54 of the Limitation Act will be the stipulated point of limitation for claiming specific performance of contract. The limitation for claiming specific performance of contract thus expired somewhere around June, 2015. This is apparent from the averments in the plaint itself.

8. The learned Trial Court has rightly observed that on the plain reading of the plaint and the application for amendment, it was absolutely clear that the relief of specific performance of contract was barred by limitation. The learned Trial Court has rightly rejected the application for amendment with respect to prayer for specific performance of contract on this ground.

9. The contention of Mr. Kedar, the learned Advocate for the petitioner that application for amendment could not have been rejected on the ground of limitation is liable to be rejected in view of judgment of the Hon'ble Supreme Court in the matter ***Basavaraj Vs. Indira and others, (2024) 3 SCC 705***, wherein it is held that when application for amendment of plaint was filed in order to challenge a compromise decree after a period of five years from the date of compromise decree, the challenge was apparently barred by limitation, and therefore, the application for amendment was liable to be rejected on the ground of limitation. Similar view is taken by the Hon'ble Supreme Court in the matter ***Vijendra Kumar Goel (supra)***, in which on the basis of agreement of sale initially suit was filed for declaration and injunction and after the

period of limitation had lapsed prayer for specific performance was sought to be incorporated by way of amendment. In the matter of *K. Raheja Constructions Ltd., (supra)* also prayer for specific performance was sought to be incorporated after expiry of limitation in a suit, which was initially filed for permanent injunction and the Hon'ble Supreme Court has held that such an amendment for incorporating time barred prayer for specific performance cannot be permitted. In the matter of *Radhika Devi (supra)*, the Hon'ble Supreme Court has held that when a right is vested with defendant on account of lapsing of period of limitation, the plaintiff cannot allowed to amend the plaint in order to incorporate relief barred by limitation since it would cause prejudice to the defendants. In the matter of *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (supra)* also a prayer for specific performance of contract, which was sought to be incorporated after a period of 11 years after filing of the suit, was held to be liable to be rejected in view of bar of limitation under Section 54 of the Limitation Act. The suit was filed for declaration of ownership and thereafter prayer for specific performance was sought to be incorporated. It was held that such amendment would alter the nature of the suit.

Accordingly, the application for amendment was held to be rightly rejected in view of bar of limitation and also on the ground that the nature of suit would be altered.

10. In view of the aforesaid judgments, there can hardly be any doubt that in case where a prayer, on the face of pleadings, appears to be barred by limitation, such a prayer cannot be allowed to be incorporated in the plaint by way of amendment. It must be reiterated that the aforesaid judgments relate to suits in which prayer for specific performance of contract was sought to be introduced after a period of limitation had expired. The ratio of said judgments is squarely applicable to the facts of the present case.

11. In the considered opinion of this Court, the learned Trial Court was absolutely right in rejecting the application for amendment qua the prayer for specific performance of contract since the same is clearly barred by limitation in view of the fact that according to the petitioner/plaintiff, specific performance was refused by the respondents/defendants in the year 2012 and the application

for amendment is filed in the year 2024.

12. When by way of proposed amendment, certain prayers are sought to be inserted and it appears that question of limitation may arise for consideration, in such cases, the underlined principle of dealing with an application under Order VII Rule 11 of C.P.C. while rejecting a plaint on the ground of limitation must be applied. If the plaint averments and the contents of the amendment application accepted on their face value demonstrate that the proposed reliefs are barred by limitation, then application for amendment should be rejected. However, if the question of limitation appears to be a question that would require evidence for adjudication then the amendment should be allowed and issue of limitation should be decided on merits.

13. As regards the relief pertaining to Section 53A of the T.P. Act, the learned Advocate for the respondents has rightly placed reliance on judgment of the Hon'ble Supreme Court in the matter of *Mohan Lal (supra)*, wherein in paragraph no.3 and 4 it is held as under :-

"3. The only question is whether the appellant is entitled to retain possession of the suit property. Two pleas have been raised by the appellant in defence. One is that having remained in possession from March 8, 1956, he has perfected his title by prescription. Secondly, he pleaded that he is entitled to retain his possession by operation of Section 53-A of the Transfer of Property Act, 1882 (for short, 'the Act').

4. As regards the First plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor of his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription nec vi nec clam nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

14. In the aforesaid case, the defendant had raised

two defences for retaining possession of the suit property, first that he had perfected title by adverse possession and secondly, that he was entitled to retain possession under Section 53A of the T.P. Act. In this context, the Hon'ble Supreme Court has observed in paragraph 4 of the judgment that both the pleas were inconsistent and in order to claim protection under Section 53A, it was essential for the defendant to give up the plea of adverse possession. It is held that in order to claim protection under Section 53A, a person must establish that he has entered into possession of property lawfully and continues to hold lawful possession of the property. As against this, adverse possession is not lawful or permissive possession, it is a possession hostile to the real owner and essentially illegal. The Hon'ble Supreme Court has expressly held that title is perfected by adverse possession when the real owner acquiesces into illegal possession of the occupier for a period of 12 years from the date on which possession become adverse or hostile.

15. Thus, the relief of Section 53A and declaration of ownership by adverse possession are self destructive pleas. In that view of the matter, no fault can be found with the

impugned order whereby the learned Trial Court has rejected the application with respect to prayer for incorporating the relief of Section 53A of the T.P. Act.

16. The learned Advocate for the respondents is also justified in placing reliance on the judgment of the Hon'ble Supreme Court in the matter of *M. Revanna (supra)*, wherein it is held that leave to amend the plaint needs to be refused when totally inconsistent case is sought to be introduced, which completely alters the fundamental character of the suit. By intending to incorporate the prayer for protection of possession under Section 53A, the basic character of the suit as originally filed, which is a suit for declaration of ownership by adverse possession, will be changed. The learned Trial Court is absolutely right in rejecting the application for amendment on this ground.

17. Apart from this, the petitioner/plaintiff has also miserably failed to satisfy the requirement of proviso to Order VI Rule 17 of the C.P.C., which lays down that application for amendment of plaint cannot be allowed after commencement

of trial unless the parties seeking to amend the pleadings satisfies the Court that despite due diligence the amendment application could not be moved prior to commencement of trial. The legal position in this regard is elucidated by the Hon'ble Supreme Court in the matter of *M. Revanna (supra)*. In the present case, apart from the bar under proviso to Order VI rule 17 of the C.P.C., the conduct of the plaintiff also shows that the application was not bonafide. As is observed in order of the learned Trial Court, the plaintiff took almost one year for completing his evidence. After completion of evidence, the plaintiff moved an application for appointment of Court Commissioner, which was rejected. Thereafter, the plaintiff sought several adjournments and avoided to proceed for advancing final arguments. The learned Trial Court heard the arguments of respondents/defendants and posted the suit for arguments of the petitioner/plaintiff and at that stage, the application for amendment came to be filed. It is thus clear that the application for amendment was filed at the fag end of the litigation after making an attempt to defer the final arguments. The conduct of the petitioner/plaintiff is certainly not bonafide.

18. The judgment in the matter of ***L.N. Aswathama*** (*supra*) relied upon by the learned Advocate for the petitioner is clearly distinguishable on the facts. In the said case, the defendant claimed ownership of the suit property on the basis of a sale deed executed in his favour by one Gowramma. He claims that he was holding the possession of the property since the year 1996 as a tenant of Gowramma and thereafter he purchased the same from her in the year 1985. Alternatively, he raised contention that if Gowramma is held not to be owner of the suit property then he had become owner by adverse possession by holding the possession of the property adverse to the interest of plaintiff for a period of more than 12 years. It is in this context that the Hon'ble Supreme Court held that the plea of ownership and adverse possession were not inconsistent pleas but merely alterative pleas, which were available to the defendants on the same set of facts. It will be pertinent to mention here that the plaintiffs in the said suit claimed that their predecessors had purchased the suit property from the State Government in the year 1940 and claimed ownership over the suit property accordingly. The plaintiffs were not claiming the suit property through Gowramma (vendor of the defendants). In the present case,

the petitioner/plaintiff claims to have entered into agreement of sale with father of the defendants/respondents. He claimed to be placed in possession of the property by the father of the defendants. He further claims that his possession had become adverse in the year 2000 and he had perfected his title by adverse possession in the year 2012. This is a peculiar distinguishing feature in the present case. The plaintiff is claiming adverse possession against the legal heirs of his vendor and is also trying to seek relief of specific performance of contract and protection of possession under Section 53A against them. It must, therefore, be held that the relief of declaration of ownership by adverse possession and protection of possession under Section 53A cannot be simultaneously claimed by the petitioner/plaintiff. Similar is the case with respect to judgment in the matter of ***Pandit Tukaram Dharrao (supra)***. In the said case, the defendants had claimed ownership over the property on the basis of a sale deed and also claimed to be in adverse possession of the property against the plaintiff. The case of adverse possession set up by the defendants is accepted by this Court although the defendants had also claimed ownership over the suit property on the basis of sale deed in his favour. This Court has held that

plea of adverse possession was available to the defendants since he was not claiming title over the property on the basis of the sale deed executed by the plaintiff. In this context, the relevant observations of this Court are as under :-

"19. Similarly, in the case of (1994) 2 SCC 29, the Supreme Court held that the pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced.

20. In the present case, both the Courts below have found on the basis of the evidence led before them that the issue regarding the adverse possession had been pleaded and proved adequately by the appellant. The plea of adverse possession raised by the appellant is for setting up of the title which is hostile to the respondent/plaintiff who claimed to be a reversionary heir of Chandrabhagabai. The appellant has not set up a title which was hostile to his transferor of the suit property under the sale deed i.e. Ananda. Had the claim of the appellant of being in possession, adverse to the title of Ananda been raised, the appellant surely would not have been permitted to raise such inconsistent pleas. He could not have contended that he was in possession of the suit property under the sale deed which was executed by Ananda in his favour and yet claimed hostile possession against Ananda. The two pleas would have been antithetical. The appellant is not

claiming a title which is hostile to his transferors interest. His claim is adverse to the reversionary heir i.e. the defendant. Both the Courts below have accepted the evidence and held that the appellant was in possession of the suit property from 1950. He had proved Exhibits 84 to 89 which indicated that he was paying taxes for the suit property and that his name was recorded by the Gram Panchayat in respect of the suit property. Both the Courts below have held that the appellant is in possession of the suit property i.e. open space and a house standing at CTS No. 1163 at Kasbe Niphad, Dist. Nasik, openly, to the knowledge of the respondent and without any disturbance from him. Therefore, there is a concurrent finding of fact recorded by both the Courts below indicating that the appellant is in possession of the suit property for the last 50 years and he had acquired title to the suit property by adverse possession."

19. The ratio of the said judgment is clearly inapplicable to the facts of the present case where the plaintiff is claiming relief of specific performance of contract and protection under Section 53A of the T.P. Act against the defendants against whom relief of ownership by adverse possession is also sought. The judgment, when read meaningfully having regard to the portion quoted in, bold,

goes against the arguments of the petitioner.

20. The learned Advocate for the petitioner has placed reliance on the judgment of this Court in the matter *Dadabhau Shankar Ghodke (supra)*, wherein it is held that a plaintiff is entitled to take alternate pleas whether consistent, complimentary or inconsistent. The learned Advocate for the petitioner has referred to paragraph 10 of this judgment.

21. The ratio of the said judgment is that when inconsistent pleas are raised the Court cannot direct the party to confine its evidence or argument to one of the two inconsistent pleas. It is also held that when two inconsistent pleas are raised by a party, originally it may abandon or destroy the other plea. However, the effect of such pleas is to be considered by the Court when it enters the zone of appreciation of evidence and considers relief to be granted. It is held that the Court is not empowered to direct the party to choose one of the two pleas. Foundation of the observation in the judgment that the Civil Procedure Code and Evidence Act do not prevent a party from taking alternate pleas whether

consistent or inconsistent or even conflicting is based on a concession. Paragraph No.10 of the judgment is reproduced hereinabove for ready reference:-

*"10. In the aforesaid three cases, the respective High Courts were not confronted with the issue, if the Court can direct a party, either while leading its evidence or while arguing its case, to confine its evidence and argument to only one of the two inconsistent pleas. The observations that inconsistent pleas cannot survive are during the course of appreciation. When a party takes inconsistent pleas, ordinarily, it may abandon/destroy one, for success in another. In a given case, two conflicting and inconsistent pleas may even destroy both the pleas, cases, grounds of attack or grounds of defence. In a given case, party may sacrifice one for the success in the alternate plea. This is a matter to be considered when the court enters the zone of appreciation of evidence and grant of relief in accordance with the case established. **There is nothing either in the Civil Procedure Code or in the Evidence Act, as conceded by Shri Deshpande, Advocate that prevents a party from pleading alternate pleas, whether consistent, complimentary or inconsistent and conflicting.***

22. The Hon'ble Supreme Court has in the matter of ***Ganesh Prasad vs. Rajeshwar Prasad and others, 2023 SCC***

Online (S.C.) 256 held as under :-

"37. All amendments of the pleadings should be allowed liberally which are necessary for determination of the real controversies in the suit provided that the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken.

38. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings."

23. The judgment of this Court in the matter of ***Dadabhau Shankar Ghodke (supra)*** to the extent it lays down that the plaintiff is entitled to raise inconsistent and conflicting pleas does not appear to go hand in hand with the judgment of the Hon'ble Supreme Court in the matter of ***Ganesh Prasad (supra)***. It needs to be reiterated that the said observation is also based on a concession and on that count also said judgment cannot be followed as precedent.

24. The ratio of the said judgment cannot be applied to the present case where amendment for incorporating the prayer for specific performance and protection under Section 53A is sought to be incorporated in a suit for declaration of title by adverse possession in view of the judgments of the Hon'ble Supreme Court in the matter of ***Mohan Lal (supra)***.

25. It will also be appropriate to refer to judgment of this Court in the matter of ***Vaishnavi Sai Shri Mahalaxmi Jagdamba Shikshan Sanstha Vs. Purva Vidarbha Mahila Parishad, (2021) SCC OnLine Bom 1194***, wherein after referring to several judgments of the Hon'ble Supreme Court, this Court has held that plaintiff can raise alternate and inconsistent pleas in the plaint so long as cause of action and relief sought in the plaint is not materially affected. Relevant observations in paragraph 39 of the judgment are reproduced hereinbelow :-

"39. alternate and inconsistent pleas can certainly be permitted to be raised in a plaint, as long as the cause of action or relief were not materially affected."

26. In this judgment, the learned Single Judge of this Court has after taking into consideration several judgments of the Hon'ble Supreme Court on the aspect of alternate and inconsistent pleas has held that although inconsistent pleas can be permitted to be raised in the plaint, the same should not materially affect the cause of action and the relief sought in the suit. In this context, it must be stated that the term, 'cause of action', although is not defined under C.P.C. or any other provision of law, it is now well settled that the term "cause of action" means a bundle of facts, which the plaintiff must prove in order to obtain relief from the Court in accordance with law. Facts on the basis of which the relief is claimed constitute essential part of cause of action. The Hon'ble Supreme Court in the matter of ***A.B.C. Laminart Pvt. Ltd. and Ors. vs. A.P Agencies, 1989(2) SCC 163***, has held as under :-

"12. A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can

possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

27. Cause of action in order to seek relief of declaration of ownership by adverse possession and specific performance and protection of possession under Section 53A of T.P. Act cannot go hand in hand, in as much as, for the former, the possession should be notorious and for the latter, it must be lawful.

28. The contention of Mr. Kedar is that the cause of action in the original suit as framed with respect to declaration of ownership by adverse possession and the prayers sought to be incorporated by way of amendment is

based on the same agreement of sale, and therefore, cause of action will not be altered, if the plaint is allowed to be amended. I am afraid, the contention cannot be accepted. The cause of action in a suit for specific performance of contract is unlawful and hostile possession for a continuous period of 12 years whereas cause of action for specific performance and Section 53A of the T.P. Act comprises of fact of entering into agreement coupled with readiness, willingness and the lawful and peaceful possession. It, therefore, goes without saying that the relief originally sought and one that is sought to be incorporated by way of amendment are not only inconsistent but self contradictory. The cause of action for one negates for the cause of action for other. Such an amendment cannot be allowed. By virtue of the amendment, the plaintiff intends to alter and substitute new cause of action. The plaintiff is seeking to incorporate inconsistent and conflict pleas, which cannot be permitted to be incorporated.

29. The judgment in the matter of *Maganlal H. Dhoshi (supra)* is relied upon by the petitioner to contend that when the facts sought to be incorporated by amendment are disputed facts, the application for amendment should not be

rejected on the ground that relief sought to be incorporated is barred by limitation. The said judgment also categorically lays down that if the prayers sought to be incorporated appears to be barred by limitation in the light of pleadings and documents on record then such application can certainly be rejected on the ground that it is barred by limitation. This judgment also follows judgment of the Hon'ble Supreme Court in the matter of ***L.J. Leach & Co. Ltd., Vs. M/s. Jardine Skinner & Co., reported in AIR 1957 S.C. 357***, wherein it is held as under :-

"It is no doubt true that Courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application."

30. It is thus clear that if from the pleading in the plaint, it is apparent that the relief claimed is barred by limitation, the application for amendment should be rejected as a matter of rule. The judgments in the matters of ***Surender Kumar Sharma, Mount Mary Enterprises, Dela Gurudal Vanjari and Gopal Shivajirao Amnawar (supra)*** relied upon by the petitioner lay down a general proposition of law that even if the application for amendment is filed at belated stage, the

same can be allowed if it is essential for deciding the suit on merits. As regards the judgment in the matter of *Rafiq (supra)* the said judgment is not relevant, in as much as, it lays down that when an appeal is dismissed in default for the fault of the Advocate, Courts must be liberal in restoring the appeal in view of the legal principle that party should not be made to suffer for the mistake of his Advocate. Mr. Kedar contends that the suit ought to have been filed for specific performance of contract and protection of possession under Section 53A of the T.P. Act. He contends that due to mistake of the Advocate, the suit was filed for seeking declaration of ownership by adverse possession. I am afraid, the said argument cannot be accepted for more than one reason. Firstly, it is well settled that the parties are completely bound by the stand taken in the pleadings. Parties cannot be allowed to disown the pleadings by simply putting the blame at the doorstep of the Advocate. The sanctity attached to the pleading will be lost if such course is adopted. Secondly, perusal of amendment application will demonstrate that, although, the petitioner seeks to incorporate prayers for specific performance and protection of possession under Section 53A of the T.P. Act, the prayer for declaration of ownership by adverse possession is

also not given up. As already held above, both these prayers cannot be allowed to be taken simultaneously since they are self destructive.

31. What emerges from the above discussion is that the petitioner/plaintiff filed a suit for declaration of ownership by adverse possession in which at the belated stage i.e. when the arguments were part heard, he filed an application for amendment in order to incorporate prayers for specific performance of contract and protection of possession under Section 53A of the T.P. Act. The application is filed after a period of 12 years from the date of denial of specific performance and as such the relief of specific performance is clearly time barred. The relief of Section 53A also cannot be claimed in view of prayer for declaration of ownership by adverse possession in view of law laid down by the Hon'ble Supreme Court in the matter of *Mohan Lal (supra)*. The contents of the application do not make out a case of due diligence, which is a statutory mandate of proviso to Order VI Rule 17 of the C.P.C. and the conduct of the petitioner/plaintiff also shows clear intention to prolong the adjudication of the suit on merits. Having regard to totality of

the circumstances, no fault can be found with the well reasoned judgment of the learned Trial Court rejecting the application for amendment of plaint. The petition is devoid of any substance and is liable to be dismissed and accordingly dismissed.

32. Civil Applications, if any, stand disposed of.

[ROHIT W. JOSHI, J.]