



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

909 WRIT PETITION NO. 9626 OF 2014

Surendra Radhakisan Autade And Another ...Petitioners

VERSUS

Ramkisan Pandurang Gole And Others Respondents

Mr. V.B. Kulkarni h/f. Mr. G.B. Kulkarni, Advocate for the
Petitioners

Mr. Mr. K.B. Jadhav, Advocate for respondent No. 1

Mr. R.P. Totala h/f Mr. A.P. Bhandari, Advocate for respondent No.
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CORAM : MANJUSHA DESHPANDE, J.

DATE : 6th MARCH, 2025

ORDER :

1. Petitioners are challenging the order dated
19.09.2014 passed by Civil Judge, Junior Division, Badnapur,
Dist. Jalna, below Exhibit-121 in Regular Civil Suit No. 65/2008.

2. Petitioners are original defendants and respondent
No. 1 is original plaintiff in R.C.S. No. 303/2007. It is submitted
by learned advocate for the petitioners that respondent No. 1 is
original plaintiff who filed R.C.S. No. 303/2007 before Civil
Judge, Senior Division, Jalna for declaration of ownership and
possession of property bearing No. 259 situated at village

Somthana, Tq. Badnapur, Dist. Jalna. Thereafter, the suit was transferred from Jalna to Badnapur and renumbered as R.C.S. No. 65/2008. After transfer of suit, plaintiff filed application seeking amendment in the plaint and has claimed that sale deeds No. 1376 and 1375 dated 12.06.2006 and consequential mutation entry No. 1434 and 1435 are illegal and not binding on him. Said amendment was allowed and thereafter issues were framed by Trial Court on 12.09.2007. After the evidence was led by the parties evidence close purshis was filed by plaintiff on 22.01.2014. Thereafter, matter was posted for hearing arguments.

3. It is the contention of petitioners that when the trial itself is commenced and suit is at final stage, the plaintiff has filed one more application seeking amendment in the plaint under Order 6 Rule 17 of CPC on 12.02.2014. In the said application, he has sought permission to add para 11 to 14 after para 10 in the suit wherein he proposed to add certain paras seeking declaration that sale deeds and corresponding mutation entries pursuant to sale deeds are not binding on him. More particularly transactions i.e. Sale deed dated 16.02.2000 vide sale deed No. 52 and mutation entry No. 1114, sale deed dated

04.05.1971, sale deed no. 1303 consequent mutation entry No. 602, and sale deed no. 2907, dated 02.10.1970 consequent mutation entry no. 602 are not binding on him. In the application it is stated that if the amendment is allowed it is not going to change nature of the suit. In fact, it would resolve all the disputes between the parties. Therefore, it is necessary in the interest of justice to allow the application.

4. Defendants No. 1 and 2 have opposed the application by filing say at Exhibit-126 contending that application is not tenable in view of the fact that evidence is already closed and application is filed at a very belated stage. If application is allowed it would amount to reopening of the suit and Court will have to frame issues as per amended pleadings. Therefore, application deserves to be rejected.

5. The Trial Court has allowed the application by order dated 19.09.2014 recording that from perusal of documents on record and nature of the suit it appears there is huge delay in filing application. As the matter suit is of the year 2008, and considering the directions issued by this Court, it requires to be decided expeditiously. It is observed that, it appears that this matter is at the stage of final arguments, Considering the

documents on record and in the interest of justice, the application is allowed subject to depositing costs of Rs. 500/-. The plaintiff was directed to carry out necessary amendment.

6. Learned advocate for the petitioner submits that pleadings in the application are bereft of details about delay that has been caused in filing the application. Considering the stage of the suit, the application deserves to be rejected. By way of seeking declaration that the sale deeds are not binding on plaintiff it amounted to changing the nature of suit, since initially it was limited to declaration only to the extent of property owned by petitioners mentioned in title clause i.e. Gut No. 259 to the extent of 1 Acre 5 R only.

7. Learned advocate for the respondent/original plaintiff submits that it is the discretion of the Court to pass order on application for amendment and it is settled legal position that applications seeking amendment of pleadings are to be liberally construed and allowed. Since he got knowledge about sale deeds during trial, he thought it necessary to file application for amendment of pleadings.

8. He places reliance on the judgment of Hon'ble Apex

Court in the case of *Pankaja & Anr. vs. Yellappa (D) by Lrs & Ors.*, AIR 2004 SC 4102. In the very judgment, Hon'ble Apex Court has framed a question that, whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period 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 amendment?

While answering the above question it is held 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.

9. I have heard the learned advocates appearing for the respective parties and after going through the application of the plaintiff it appears that plaintiff has simplicitor prayed for amendment of the plaint by adding para nos. 11 to 14 in the plaint. So far as other details are concerned the application does not contain any averment about when plaintiff got knowledge that he needs to incorporate certain facts in the plaint; what is the source of his knowledge and the reason for delay that has occurred in filing the application. There is no averment, that in

spite of due diligence he he could not raise grounds in the plaint.

10. It was incumbent upon the plaintiff to incorporate in the application itself that in spite of due diligence he could not gather information before the trial commenced, hence, the delay has occurred in filing the application for amendment, since the application is made after the trial has commenced. Order 6 Rule 17 of CPC provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

11. It is also worthwhile to note that even previously the plaintiff has filed an application seeking amendment of plaint and that was allowed by the Trial Court. Earlier application was filed by plaintiff on 22.10.2007 and it has been allowed on 07.03.2008. Therefore, there was more the reason for the plaintiff to mention in the application that, in spite of due diligence he could not incorporate pleadings in his plaint due to lack of knowledge. The only averment made by the plaintiff in his application is that, it is necessary in the interest of justice to allow the amendment and it will not cause any prejudice to the defendants.

12. While passing the impugned order, Trial court has also not taken into consideration that it was necessary for the plaintiff to make averment regarding the due diligence in his application and Trial Court has also not recorded any finding on due diligence in the impugned order. Proviso to Order 6 Rule 17 specifically provides that if application is made after commencement of trial, it is necessary for the Court to record that in spite of due diligence the party could not have raised the matter before the trial is commenced.

13. Merely because this Court has given direction to decide the matter expeditiously, the Trial Court appears to have allowed the application in hasty manner without recording reasons for allowing the application. The only reason on the merit of the application is recorded that it will not cause hardship to the defendants.

14. Though it is well settled law that applications for amendment are to be liberally granted, the Trial Court has failed to exercise jurisdiction by recording reasons while allowing the amendment.

15. Learned advocate for the petitioner has relied on

judgment in the case of ***Revajeetu Builders & Developers vs. Narayanaswamy & Sons & Ors.***, 2009(6) ALL MR 986, wherein certain conditions for grant of amendment have been carved out, which are reproduced herein below:

- (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 amendment 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."*

16. The judgment in the case of ***Sasa Detergent Division Vs. Damnodar Murdliyar & Others***, 2012(2) Mh.L.J., specifically lays down that only if the reasons for the delay are found to be satisfactory, the amendment application can be allowed.

17. In the present case, the amendment application itself was bereft of details i.e. i) averment about due diligence, ii) reason for delay in filing application and iii) in what manner

amendment is necessary for adjudication of dispute. All these factors were not considered by the Trial Court while allowing the amendment application. Therefore, in my view, order passed by Civil Judge, Junior Division, Badnapur, deserves to be quashed and set aside, since it is not in consonance with Order 6 Rule 17.

18. Therefore, the Order dated 19.09.2014 passed by Civil Judge, Junior Division, Badnapur, Dist. Jalna, below Exhibit-121 in Regular Civil Suit No. 65/2008 is hereby quashed and set aside.

19. As a result, the Writ petition is allowed in above terms.

20. Considering that the matter was already at the stage of final arguments, the Civil Judge, Junior Division, Badnapur, Dist. Jalna is requested to decide the suit expeditiously and preferably within four months from the date of receipt of this order.

(MANJUSHA DESHPANDE, J.)