



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

4 WRIT PETITION NO. 12849 OF 2019

SYED FAROOKH SYED UMAR AND OTHERS
VERSUS
SHEHNAZ BEGUM RASHEED AND OTHERS

...
Mr. H. I. Pathan, Advocate for the Petitioners
Mr. M. B. Ubale, Advocate for Respondent No.1

CORAM : R. M. JOSHI, J.

DATE : 13th OCTOBER, 2025

P.C. :-

1. By consent of both sides, heard finally at the stage of admission.
2. This Petition takes exception to the order dated 04/09/2019 passed below Exhibit 51 in R.C.S. No. 351/2017, whereby the Application filed by the Plaintiffs for amendment to the plaint under Order 6 Rule 17 of the Code of Civil Procedure (for short 'CPC') came to be rejected.
3. There is no dispute about the fact that the Petitioners/Plaintiffs filed R.C.S. No. 351/2017 against the Defendants/ Respondents for declaration of compromise decree being not binding so also injunction in respect of the suit property. The suit came to be resisted by the Defendants by filing written statement. Interim relief Application was heard and decided by the Trial Court rejecting the said Application. Thereafter on 12/03/2019 issues were framed and matter

was posted for recording evidence. Affidavit of evidence is filed on 04/08/2019 by the Plaintiffs. On 05/08/2019, Application was moved before the Trial Court for amendment to the plaint. It is the case of the Plaintiffs that during the pendency of the suit, more particularly on 11/12/2018 Plaintiffs were dispossessed by the Defendants from the suit property. Therefore, the said pleading with prayer of possession sought to be added.

4. This Application was resisted by the Defendants. The Trial Court rejected the Application by passing impugned order, hence, this Petition.

5. Learned Counsel for the Petitioners submits that it was open for the Plaintiffs to seek amendment to the plaint to bring on record subsequent events i.e. the events which have occurred during the pendency of the suit. It is his submission that the merit of the amendment cannot be gone into by the Court at this stage. He according to him, Application for amendment was duly served upon the Defendants on 03/08/2019, and which indicates that the Application for amendment was intended to be moved even before the evidence commenced. It is submitted that inadvertently, the Application came to be claimed before the Trial Court on 05/08/2019 and before that affidavit of evidence came to be filed. It is his submission that in the facts of the case, Application ought to have been allowed by the Trial

Court by imposing appropriate cost, if any.

6. Learned Counsel for the Respondents resisted the Petition by drawing attention of the Court to proviso Order 6 Rule 17 of the CPC contending that the Plaintiffs have failed to show due diligence for not amending the plaint before the commencement of trial. It is his submission that in any case if the amendment is allowed, it will change the very nature of the suit which is impermissible in law.

7. There cannot be any dispute with regard to the fact that the Trial Court commences it is for the parties to show due diligence in order to claim amendment to the pleadings. It is also settled position of law in view of the Division Bench's judgment in case of ***M. Revanna Vs. Anjanamma (dead) by L.Rs. And others, 2020(1) Mh.L.J. 143*** that the trial is said to have commenced only after filing of the affidavit of evidence. Though herein this case affidavit of evidence of Plaintiffs came to be filed on 04/08/2019, it is undisputed fact that the Plaintiffs had served the copy of the Application for amendment to the Defendants on 03/08/2019. This clearly shows that at the most it could be said to be an error committed by the lawyer in not filing the said Application before filing of affidavit of evidence. Needless to say that party cannot be made to suffer for mistake of an Advocate.

8. The law on the point of amendment is fairly settled to say that subsequent event occurred could be permitted to be brought on

record provided it is relevant. Similarly, at the stage of amendment merit of the amendment cannot be gone into. The learned Counsel for the Petitioners/ Plaintiffs claims that on 11/12/2018 they were dispossessed from the suit property, without going into the merit of the said amendment of Trial Court ought to have allowed the same. Moreover apparently the amendment is done within limitation of occurrence of alleged cause of action. No prejudice would have caused to the Defendants by allowing of the said amendment as it was open for the Defendants to resist the same on merit.

9. Having regard to the afore stated facts, this Court finds it appropriate to set aside the impugned order and to allow the Application (Exhibit 51) by directing the Plaintiffs to pay cost of Rs.10,000/- (Rupees Ten Thousand only) to the Defendants.

10. In view of the same, the Petition stands allowed. Amendment be carried out within a period of four weeks from today. Trial Court to ensure that the cost is paid to the Defendants before amendment is carried out. If cost is not paid within this period, the order passed by this Court allowing Application (Exhibit 51) shall stand vacated without reference to the Court and the Application (Exhibit 51) shall stand dismissed.

(R. M. JOSHI, J.)

ssp