



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

26 WRIT PETITION NO. 1802 OF 2020

Gulab Shaikh Nabi Maheboob

...Petitioner

VERSUS

Ramchandra Narayan Patil Through Lrs
Venubai Ramchandra Patil And Others

...Respondents

.....

Mr. Shantaram Dheple, Advocate for the petitioner
Mr. M.B. Ubale for respondents No. 11 to 13

.....

CORAM : MANJUSHA DESHPANDE, J.

DATE : 24th FEBRUARY, 2025

ORDER :

1. The petitioner has challenged the order dated 31.07.2019 passed by Joint Civil Judge, Junior Division, Jamner, below Exhibit-93 in Regular Civil Suit No. 96 of 2012.

2. Petitioner/original plaintiff filed Regular Civil Suit No. 96 of 2012 for specific performance of contract against respondents/defendants, in respect of the suit property situated at Pahur Peth, Tq. Jamner, Dist. Jalgaon of Gut No. 767 admeasuring 2 Hectare 53 R.

3. It is the contention of the petitioner that after filing of the suit notices were issued to respondents and they have

filed their written statement. During pendency of the suit, plaintiff filed application under Order 6 Rule 17 of Code of Civil Procedure claiming that though in the plaint he has stated that plaintiff is in possession on the basis of agreement to sale, however, during the intervening period, after filing of the suit, respondents had forcibly taken possession of the suit land from the plaintiff in the year 2014. Therefore, it is necessary to carry out amendment in the plaint making an averment that he has lost possession of the suit land since he was forcibly dispossessed by respondents and it is also necessary to incorporate prayer seeking restoration of possession.

4. On filing the application, respondents opposed the application contending that application of the plaintiff does not contain details as to when exactly plaintiff has been dispossessed. The application is bereft of necessary details of dispossession. Other objection which has been raised by respondents is that prayer for restoration of possession is subject matter of independent proceeding in view of Section 6 of Specific Relief Act, 1963 which contains bar of entertaining suit for restoration of possession, after expiry of six months from the date of dispossession. Therefore, prayer of plaintiff seeking

restoration of possession after delay of four years is not capable of being entertained.

5. Learned Joint Civil Judge, Junior Division, Jamner has passed order on 31.07.2018 rejecting the application of the plaintiff seeking amendment in the plaint under Order 6 Rule 17, further directing to pay cost of Rs. 1,000/- to the defendants. The application has been rejected on the ground that proposed amendment is based on totally different cause of action. It is not permissible to merge claim of dispossession in a suit for specific performance of contract. Both contentions of plaintiff are contrary to each other. They cannot sustain in same suit. The proposed amendment will create complications and act as obstacle to decide the issues involved in earlier suit. Proper remedy available to the plaintiff is to file suit under Section 6 of the Specific Relief Act. In view of alternate and efficacious remedy available, plaintiff cannot take recourse of provisions of Order 6 Rule 17 of CPC. It would amount to take away right which is accrued to defendants by lapse of time. The proposed amendment would introduce totally different, new and inconsistent case as the application is made at later stage of the proceeding. By recording aforesaid finding, application has been

rejected.

6. It is the contention of learned advocate for the petitioner that in the plaint itself there was averment made by plaintiff that he is in possession on the basis of agreement to sale and the vendor has executed possession receipt dated 07.06.2006 and from that date he is in possession of suit land and is cultivating the said land. The prayer in the suit is for execution of sale deed on the basis of agreement to sale. Though, the plaintiff has filed suit while he was in possession of the suit land, however, during the pendency of the suit he has lost possession, therefore, since subject matter of suit is same and he is seeking execution of sale deed on the basis of agreement to sale, subsequent development of dispossession is necessary to be incorporated in the plaint with prayer for restoration. The substantive prayer in the suit is for execution of sale deed on the basis of agreement to sale, therefore, if he succeeds to get the relief of execution of agreement to sale, he will have to file separate proceedings for possession. Since, he was already in possession according to his averment in the plaint, it was not necessary to make a prayer seeking possession. Due to his dispossession in the intervening period, it

is necessary to bring the subsequent development of dispossession and make necessary averment and a prayer in the plaint. The dispossession of the plaintiff cannot be independent subject matter of suit for restoration of possession. The learned Joint Civil Judge, Junior Division has committed an error in making observation that the appropriate remedy would be filing suit under Section 6 of Specific Relief Act.

Learned advocate for the petitioner places reliance on the judgment in the case of ***Dela Gurudal Vanjari vs. Uddhal Govardhan Rathod***, 2012(3) Mh.L.J. 940, wherein it is held that;

"16. The interest of the defendant for raising the plea of limitation can be safeguarded by directing the trial Court to consider the issue of limitation that would be raised by the defendant. It is also made clear that the amendment, as proposed by the plaintiff, shall not relate back to the date of the suit and shall be deemed to have been incorporated in plaint on the date of presentation of application under Order 6, Rule 17 of the Code of Civil Procedure."

7. Learned advocate for the petitioner further places reliance on the decision of this Court in the case of ***Shakuntala w/o Balasaheb Balsaraf since deceased through Lrs. vs. Ramdas s/o Laxman Balsaraf & Ors.***, 2013(2) ALL MR 298. In similar facts and circumstances, this Court has allowed the amendment for restoration of possession in the suit and held that by allowing

such amendment nature of the suit will not change and if amendment is not allowed plaintiff will have to file another suit for possession. Therefore, to avoid multiplicity of proceedings amendment of plaint was allowed.

8. Per contra, learned advocate Shri. M.B. Ubale, appearing for respondents No. 11 to 13 submits that delay that has occurred in filing application has not been explained by the plaintiff. Even the application for amendment of plaint does not contain specific details as to when plaintiff has lost his possession. If the amendment is allowed nature of suit itself would be changed. Other objection raised by him is that there is substantive remedy available to the plaintiff in view of Section 6 of Specific Relief Act. Since the plaintiff has failed to avail the remedy within limitation of six months as provided under Section 6 of Specific Relief Act, the application for amendment in plaint for the same cause stands barred by limitation. According to him issues are already framed in the suit and thereafter plaintiff has filed present application under Order 6 Rule 17. In view of above, he submits that learned Joint Civil Judge, Junior Division, Jamner is perfectly justified in passing the order, which does not deserve any interference.

9. In support of his contentions, learned advocate for respondents places reliance on the judgment of this Court in the case of ***Kailash Anupam Khimsiya vs. Shamji Enterprises and others***, 2019(2) Mh.L.J. 168, wherein this Court by relying on decision of Hon'ble Supreme Court in the case of ***Revajeetu Builders and Developers vs. Narayanaswamy and Sons and ors.***, (2009) 10 SCC 84 has laid down guidelines to be considered while entertaining the application for amendment under Order 6 Rule 17 of CPC. It is held that, amendment should not cause any prejudice to the other side which cannot be compensated adequately in terms of money. It is also held that 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. Therefore, learned advocate for respondents submits that this decision is squarely applicable to the facts of the present case.

Learned advocate for respondents also places reliance on the judgment in the case of ***M. Revanna vs. Anjanamma (dead) by L.Rs. And others***, 2020(1) Mh.L.J. 143, wherein it is held that leave to amend may be refused if it introduced totally different, new and inconsistent case, or challenges fundamental character of suit.

10. After hearing the parties and after going through the documents placed on record along with the impugned order it is evident that there was pleading of the plaintiff that on the basis of agreement to sale, he was in possession. Therefore, in the suit prayer was made for execution of sale deed on the basis of agreement to sale. It is stated in the application Exhibit-93 that since certain permissions from the revenue officer is necessary, there was no mention about possession of plaintiff. In the meanwhile, because of dispossession of plaintiff by defendants, plaintiff was constrained to file application under Order 6 Rule 17 to incorporate subsequent developments in the suit. Since subject matter of suit is already pending before Civil Court, it was necessary to file application for amendment in the pleadings to bring subsequent development on record those have taken place during the pendency of the suit. Accordingly, he has filed application under Order 6 Rule 17 of CPC.

11. In a catena of judicial pronouncements the Hon'ble Apex Court has held that that applications for amendment have to be liberally construed and the Court should not adopt hyper-technical approach while considering the amendment application. Amendments are to be liberally allowed in order to avoid

multiplicity of proceedings. The judgment of this Court which is relied upon by petitioner in the case of *Dela Vanjari* (supra) takes into consideration the relevant judicial pronouncements which have laid down foundation of construction of Order 6 Rule 17 of CPC. A useful reference can be made to para 67 of the decision in *Revajeetu Builders* (supra), which reads thus;

"67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(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."

12. Applying above guidelines which have been laid down by Hon'ble Supreme Court in above case, in my opinion, present case is squarely covered by the above guidelines. The

dispossession of the plaintiff during pendency of the suit is necessary to be incorporated in the plaint. The application for amendment filed by plaintiff is bona fide application and it would not cause any prejudice to the other side, since other side is at liberty to file say to the amended plaint. The proposed amendment does not change the nature of suit. The prayer of the plaintiff is for execution of sale deed on the basis of agreement to sale. Therefore, even if the amendment is allowed, the nature and character of suit is not going to change.

13. Learned Joint Civil Judge, Junior Division, Jamner has committed an error by observing that, proposed amendment is based on totally different cause of action. Since trial has not yet commenced, necessary issues can be framed and parties are at liberty to lead necessary evidence in support of the amendment. In fact, in order to avoid multiplicity of proceedings, amendment is required to be allowed. Therefore, order passed by Joint Civil Judge, Junior Division, Jamner below application Exhibit-93 deserves to be quashed and set aside.

14. In the result, I proceed to pass following order:

ORDER

(i) Writ Petition is allowed.

- (ii) Order dated 31.07.2019 passed by Joint Civil Judge, Junior Division, Jamner, below Exhibit-93 in Regular Civil Suit No. 96 of 2012 is hereby quashed and set aside, subject to payment of cost of Rs. 10,000/- to be paid to defendants in the Trial Court before trial proceeds further.
- (iii) Application Exhibit-93 is allowed.
- (iv) Writ petition stands disposed of.

(MANJUSHA DESHPANDE, J.)