

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11478 OF 2023

1. Anandi Ganpatrao Chavan
(since deceased through LRs)
2. Malubai Vasantrya Chavan
(since deceased through LRs)
2a. Charulata Rajendra Chavan ...Petitioners
vs.
Roopesh Vasantrya Chavan and Others ...Respondents

Mr. Gaurav Nankani i/b. Mr. Amruta Devkat, for the Petitioners.
Mr. Manoj Patil a/w. Mr. Shubham Dhenge, for Respondent No. 1
Mr. Aditya Desai, for Respondent No. 2.

CORAM : N. J. JAMADAR, J.
DATE : FEBRUARY 5, 2025

P.C:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order dated 19th November, 2022 passed by the learned Civil Judge, Peth-Vadgaon on an application for amendment in the plaint preferred by Charulata Chavan, who came to be impleaded as plaintiff No. 2a, post the demise of Malubai Chavan, the deceased/plaintiff No. 2 whereby the application came to be rejected observing, inter alia, that the proposed amendment is not necessary for the determination of real question in controversy between the parties to the suit. It also substantially alters the nature and character of the suit.
3. Mr. Nankani, learned counsel for the petitioners, submitted

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that the application for amendment was filed after the petitioner came to be impleaded as a legal representative of Malu Chavan, the deceased/ plaintiff No. 2. The proposed amendment is necessary for determination of the real question in controversy as there are disputes inter se legal representatives of Malu Chavan, the deceased/ plaintiff No. 2, who have been brought on record as plaintiff Nos. 2a to 2d. The proposed amendment will not cause any prejudice to the defendants. It will avoid multiplicity of the proceedings.

4. To bolster up the aforesaid submission, the learned counsel for the petitioners placed reliance on a judgment of the Supreme Court in the case of **Dinesh Goyal @ Pappu vs. Suman Agarwal (bindal) and Ors.**¹. In the said case, the Supreme Court has culled out the principles which govern the amendment of the pleadings. Special emphasis was led by Mr. Nankani on the observations in paragraph No. 11.2 of the judgment which read as under:-

11.2] Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17. Recently, this Court in **Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr.**, after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles:-

- (i) 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.
- (ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.

1 Civil Appeal arising out of SLP. No.30324/2019 Dt.24/09/24.

(iii) Amendments, while generally should be allowed, the same should be disallowed if –

(a) 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.

(b) The amendment does not raise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)

(c) The amendment completely changes the nature of the suit;

(d) The prayer for amendment is malafide,

(e) By the amendment, the other side should not lose a valid defence.

(iv) Some general principles to be kept in mind are –

(I) The court should avoid a hyper-technical approach; ordinarily be liberal, especially when the opposite party can be compensated by costs. (II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new approach.

(III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint.

5. The legal position as regards the amendment in the pleadings is well settled. Two overarching principles govern the exercise of the jurisdiction. One, whether the proposed amendment is necessary for the determination of the real question in controversy. Two, the potentiality of prejudice to the opponent. In addition, the considerations as to whether the relief claimed by way of proposed amendment is barred by any law and whether the proposed amendment substantially and fundamentally alters the nature and character of the plaint or defence, as the case may be, also enter the judicial determination.

6. In the instant case, though the application for amendment was filed after the settlement of the issues, yet, the proviso to Order VI Rule 17 may not operate as the petitioner came to be impleaded in the year 2018 and thereafter the application for amendment was

filed. The question that warrants consideration is whether the proposed amendment substantially alters the nature and character of the suit. From the perusal of the draft of the proposed amendment, as incorporated in the amendment application, it becomes abundantly clear that the petitioner is essentially aggrieved by the acts and conduct of the co-plaintiffs, the other legal representatives of Malu Chavan. Those assertions pertain to the stage of devolution of interest of Malubai upon her heirs.

7. The suit is instituted for partition of the joint family properties by Malu Chavan and her siblings. Decision on the disputes inter se legal representatives of Malu Chavan is not necessary for adjudication of the questions in controversy that arises for determination in the suit. The submission that the proposed amendment would obviate multiplicity of the proceedings cannot be countenanced as the amendment, if allowed, has the propensity to completely change the nature of the suit. The co-plaintiffs- the other legal representatives of Malu Chavan would then be required to be transposed as the defendants.

8. In the aforesaid view of the matter, learned Civil Judge has committed no error in rejecting the application for amendment.

9. The petition stands dismissed.

(N. J. JAMADAR, J.)