



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11824 OF 2023**

Lilavati Ambarnath Pardeshi ... Petitioner
versus
Balasaheb Bhagwan Pardeshi and Ors. ... Respondents

Mr. Akshay Kulkarni with Mr. Avesh Ghadge, for Petitioner.
Mr. Ishaan Kapse, for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 17 APRIL 2025

P.C.

1. Heard the learned Counsel for the parties.
2. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally.
3. The challenge in this Petition is to an order dated 14 July 2023, whereby the learned Civil Judge, Jr. Division, Ichalkaranji, was persuaded to reject the application for amendment in the plaint on the premise that the proposed amendment would change the nature and character of the suit.
4. The Petitioner has instituted a suit for declaration that the sale deeds executed on 24 April 2014 were a sham and bogus and they do not bind the share of the Plaintiff in the suit property and the release deed dated 22 July 2013 had been fraudulently obtained by Defendant Nos.1 to 3 and 8 and it does not bind the interest of the Plaintiff in the suit property; a declaration that the Plaintiff has 1/28 share in the suit property and is entitled to partition and

separate possession of her share in the suit property and the consequential relief of injunction.

5. During the pendency of the suit, the Plaintiff had filed an application for temporary injunction. The said application came to be rejected on 20 January 2021. The Plaintiff preferred an appeal against the said order before the District Court. During the pendency of the said appeal, the Plaintiff asserts, the Defendant Nos.16 to 19, by taking undue advantage of no restraint order and the situation which arose on account of Covid-19, have erected a five storied structure on the suit property. Therefore, the Plaintiff was constrained to file an application seeking amendment in the plaint to bring subsequent events on record and also seek relief of mandatory injunction of demolition of the said structure and restore the suit property to status quo ante, the date of institution of the suit.

6. The application was resisted by the Defendants.

7. Though the learned Civil Judge recorded that the events which the Plaintiff sought to bring on record had transpired during the pendency of the appeal against the order of rejection of the application for temporary injunction, yet the learned Civil Judge rejected the prayer for amendment on the premise that the proposed amendment would change the nature and character of the suit, and the relief, sought to be incorporated by way of amendment, would be materially different from the original prayer.

8. Learned Counsel for the Petitioner submitted that the impugned order is wholly unsustainable. Despite having known the fact that the Defendants have carried out construction during the pendency of the appeal, the learned Civil Judge unjustifiably rejected the application for amendment in the pleadings. It was submitted that the governing principles were not kept in view.

9. Learned Counsel for the Respondents made an endeavour to support the impugned order. It was submitted that the suit was primarily for the partition and separate possession of the share of the Plaintiff. Even if the Plaintiff succeeds in the suit, the Plaintiff cannot seek relief of mandatory injunction of demolition of the structure which has already been erected. At best, the Plaintiff would be entitled to her share in the suit property which can be adjusted at the stage of the execution of the decree.

10. I have perused the averments in the application, plaint and the material on record. Incontrovertibly, the Defendant Nos.16 to 19 have carried out construction and erected structure on the suit property during the pendency of the appeal before the District Court against the order rejecting the prayer of temporary injunction. It is trite that the Court is required to take conscious cognizance of the subsequent events which transpired during the pendency of the proceedings. Though, the learned Civil Judge reckoned that the events, which the Plaintiff proposed to bring on record by way of amendment, were

subsequent to the institution of the suit, yet, the learned Civil Judge lost sight of the overarching principles which govern an application for amendment in the pleadings.

11. All amendments which are necessary for the determination of the real question in controversy between the parties are required to be allowed. In the case at hand, the trial has not commenced. Thus, the interdict contained in the proviso to Order VI Rule 17 of the Code, was not attracted. Nor the proposed amendment had the potentiality to cause irretrievable prejudice to the Defendants. On the contrary, it was the case of the Plaintiff that taking undue advantage of the absence of restraint order and the exigency of the situation which arose on account of Covid-19, the Defendant Nos.16 to 19 have erected structure.

12. In a situation of this nature, the learned Civil Judge ought to have permitted the application for amendment in the pleadings.

13. It is trite, the merits of the amendment cannot be gone into at the stage of consideration for amendment. Whether the Plaintiff would succeed in getting relief of mandatory injunction for removal of the construction erected by Defendant Nos.16 to 19 during the pendency of the suit, is a matter for adjudication at the trial.

14. Thus, the impugned order cannot be sustained and the Petition deserves to be allowed.

15. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned order stands quashed and set aside.
- (iii) The application for amendment stands allowed.
- (iv) Necessary amendment in accordance with the text of the draft amendment in the said application be carried out within a period of four weeks from the date of uploading of this order.
- (v) The Defendants are at liberty to file additional Written Statement within 30 days of being served with the amended copy of the plaint.
- (vi) It is clarified that the observations in this order are confined to determine the legality, propriety and correctness of the impugned order and the trial Court shall not be influenced by any of the observations, while finally adjudicating the suit.
- (vii) Rule made absolute in the aforesaid terms.
- (viii) No costs.

(N.J.JAMADAR, J.)