

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9253 OF 2022

Shri Shankar Dnyanoba Ambekar ... Petitioner
Died since through Lrs.

V/s.

Ravindra Yashwant Sutar and Anr. ... Respondents

Mr. Sandeep S. Koregave, for the Petitioner.

CORAM : N.J. JAMADAR, J.

DATE : 9TH APRIL 2025.

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1. Heard Mr. Koregave, learned counsel for the petitioner.
2. The legality, propriety and correctness of an order passed by the learned Civil Judge, on 21st October 2021, thereby permitting the plaintiff to amend the plaint so as to incorporate a relief of declaration in addition to the injunction which was initially sought by the plaintiff, is assailed in this petition.
3. Respondent no. 1 instituted a suit with the assertion that defendant no. 1 had unlawfully transferred the right to use the terrace, which the plaintiff was also entitled to use, by executing an instrument

in favour of defendant no. 2. Defendant no. 1 was legally not entitled to transfer the right to use the terrace to defendant no. 2. It was, *inter alia*, asserted that, on 15th December 2015, the plaintiff had learnt that the defendant no. 1 had executed such an instrument in favour of the defendant no. 2.

4. The petitioner contested the suit.

5. During the pendency of the suit, the plaintiff filed an application for amendment in the plaint to incorporate the averments to the effect that the plaintiff learnt that, the defendant no. 1 had executed a registered instrument on 14th October 2015 in favour of the defendant no. 2 and it was, therefore, necessary to seek a declaration that the said instrument dated 14th October 2015 was illegal, void and did not bind the rights of the plaintiff.

6. By the impugned order, the learned Civil Judge was persuaded to allow the application as the amendment was sought at a pre-trial stage, and to avoid the multiplicity of the proceedings the amendment was necessary. The learned Civil Judge also adverted to the aspect of legality and validity of such instrument. On the aspect of limitation, the learned Civil Judge observed that, the issue of limitation, being a mixed question of facts and law, an issue about the

bar of limitation can be framed and tried in the suit.

7. Mr. Koregave, the learned counsel for the petitioner, took the Court through the averments in the plaint. Placing emphasis on Para 6 of the plaint, wherein the cause of action has been specifically pleaded, Mr. Koregave urged that the plaintiff was very well aware that an instrument of sale had been executed by the defendant no. 1 in favour of defendant no. 2 and despite such full knowledge, the plaintiff had omitted to sue for declaration. The proposed amendment, which was sought in the year 2019, was, thus, clearly barred by law of limitation. The bar under order II Rule 2 of Civil procedure Code was also attracted. Without dealing with these specific objections, learned Civil Judge allowed the application for amendment, urged Mr. Koregave.

8. To buttress this submission, Mr. Koregave has placed reliance on the judgment of the Supreme Court in the Case of *Radhika Devi vs Bajrangi Singh & Ors*¹, the judgment of a learned single Judge of this Court in the case of *Harinarayan G. Bajaj and Anr. Vs. Vijay Agarwal and Ors.*² and another judgment in the case of *Eknath Nivrutti*

1 (1996) AIR SUPREME COURT 2358

2 2012 (6) Bom C.R. 706

Hegadkar (d) through his legal heirs and Ors Vs. Aagatrao Dyanu Ghodake (d) through his legal heirs and Ors. ³

9. Mr. Koregave, submitted with a degree of vehemence that since the relief of declaration is clearly barred by law of limitation, in view of the provisions contained under Article 58 of Schedule 1 of the Limitation Act, 1963, the impugned order deserves to be quashed and set aside.

10. The legal position as regards amendment in pleadings is well settled. All amendments which are necessary for the determination of real question in controversy between the parties are required to be allowed. At the same time, the Court has to be alive to the potentiality of prejudice likely to be caused to the opponent in the event the amendment is allowed.

11. In the case at hand, evidently, the amendment was sought at the pre-trial stage and, therefore, the interdict contained in the proviso to Order VI Rule 17 was not attracted.

12. The thrust of the submission of Mr. Koregave was that the amendment was clearly barred by law of limitation. Despite being cognizant of the fact that defendant no. 1 has executed an instrument

3. 2021 (4) ALL Mr. 355

in favour of defendant no. 2, and making a specific reference thereto in the plaint, relief of declaration was not sought. Therefore, the relief now claimed by way of amendment is clearly barred by law of limitation.

13. As regards the relief being barred by law of limitation also, the legal position is fairly crystalised. If the relief sought to be introduced by way of amendment is ex-facie barred by law of limitation, as the rule, the courts decline to grant such amendment. However, this is not an absolute and immutable rule of law. Even when the relief claimed in the plaint appears to be barred by law of limitation, the Court may allow the amendment having regard to the justice of the case.

14. A useful reference in this context can be made to the decision of the Supreme Court in the case of *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Anr.*⁴ wherein after adverting to previous pronouncements, the Supreme Court culled out the principles of law as under:

“30. From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the

4 (2022) SCC Online SC 1128

amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.”

15. It is also well settled that the Court can allow the amendment keeping open the issue of limitation to be decided at the trial. A profitable reference can be made to the judgment of the Supreme Court in the case of *Raghukul Tilak vs Pitam Singh And Ors*⁵.

16. In the case at hand, the trial Court had adopted the the aforesaid approach. Upon a careful consideration of the pleadings and material on record, I do not find the aforesaid approach of the trial Court is unjustifiable. In Para 4 of the plaint, the plaintiff had made categorical averments to the effect that the instrument purportedly executed by the defendant no. 1 in favour of the defendant no. 2 to convey the right to use the terrace is illegal and does not bind rights of the plaintiff. The averments in the plaint, if read as a whole and in a correct perspective would indicate that there was indeed a challenge to the legality and validity of the instrument of sale executed by the

⁵ (1931) AIR ALL 99

defendant no. 1 in favour of the defendant no. 2.

17. In these circumstances, the proposition laid down in the case of ***Raghukul Tilak*** (supra), would govern the facts of the case with full force. Therefore, the learned Civil Judge was justified in allowing the amendment keeping open the issue of limitation qua reliefs, sought to be added by way amendment, to be framed and decided at the trial.

18. In view of the above, this Court does not find any merit in the petition.

19. The petition stands dismissed.

20. The Trial Court shall frame the issue of limitation and decide the same along with all other issues at the time of final adjudication.

(N.J. JAMADAR, J)