

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13899 OF 2024

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Shankar Dinkar Chavan
(since deceased through LR's)

...Petitioner

vs.

Pandurang Shivram Chavan and Others

...Respondents

Mr. Parag Tilak, for the Petitioners

Mr. Ashutosh Kulkarni a/w. Mr. Shailesh Chavan, for Respondent
Nos. 1 to 15.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 19, 2025

P.C:

1. This petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of the order passed by learned Civil Judge on 29th July, 2024 whereby an application preferred by the petitioners/plaintiffs for amendment in the plaint, under the provisions of Order 6 Rule 17 of the Code of Civil Procedure, 1908 (the Code) came to be rejected.

2. Shankar Chavan, the predecessor in title of the petitioner, instituted a suit seeking perpetual injunction against the defendant Nos. 1 to 12 from causing an obstruction to the possession and enjoyment of the plaintiff over the suit property admeasuring 43R out of Survey No.320/2/7A/1. (Old Survey No. 328/2/7A/1 and earlier Survey No. 414/2A/3). Defendant Nos. 1 to 12 are the successors in interest of Shivram Pandu Chavan, the uncle of the

deceased-plaintiff Shankar Dinkar Chavan.

3. The plaintiff claimed the defendants had instituted a collusive suit No. 11 of 1991 and pursuant to the proceedings in the execution of the decree passed in the said suit i.e. Special Darkhast No. 131 of 2001, the defendants started to cause obstruction to the possession and enjoyment of the plaintiffs over the suit property. Hence, the suit for perpetual injunction.

4. In the said suit, the deceased plaintiff Shankar led his evidence. After the plaintiff closed his evidence, the evidence on behalf of the defendants also came to be recorded. At the stage of final argument, the petitioner preferred an application for amendment in the plaint seeking to incorporate certain additional averments. The application was resisted on behalf of the defendants.

5. By the impugned order, the learned Civil Judge was persuaded to reject the application as plaintiff failed to satisfy the test of due diligence as the matters, which were sought to be introduced by way of amendment, well within the knowledge of the plaintiff and no reason was ascribed as to why the amendment could not be sought prior to the commencement of the trial.

6. Mr. Tilak, the learned counsel for the petitioner, submitted that the amendment was necessitated as at the stage of argument

the defendants placed on record the documents, namely the copy of Map vide M.R.No. 332 which came to be prepared pursuant to the order passed in the earlier execution proceedings i.e. Darkhast No. 113 of 2004, and the copies of two Sale Deeds executed on 12th September, 1980 in respect of Survey No. 414/2A/3. Even otherwise, the amendments are clarificatory in nature. No prejudice would be caused to the defendants if the amendments are allowed. Mr. Tilak further submitted that the intent of the plaintiff is not to protract the trial. He has instruction to make a statement that the plaintiff would not lead further evidence, if the amendment is allowed. Therefore, to decide all questions in controversy, the amendment deserves to be allowed.

7. Mr. Kulkarni, the learned counsel for respondents, countered the submissions on behalf of the petitioner. It was urged that the application for amendment does not disclose due diligence. The application for amendment came to be filed so as to wipe out the admissions which were elicited in the cross examination of late Shankar. The learned counsel took the Court through the cross examination of Shankar, the deceased plaintiff, to lend support to his submission that material admissions were elicited in the cross examination of Shankar and to wriggle out of the situation expansive amendments were sought to be introduced by way of

proposed amendment, urged Mr. Kulkarni.

8. First and foremost, the trial has not only commenced but was almost on the verge of completion, when the application for amendment came to be preferred. Both the parties had closed the evidence and at the stage of final argument the application came to be filed. Therefore, the interdict contained in the proviso to Order 6 Rule 17 of the Code comes into play with full force and rigour.

9. I have carefully perused the averments in the application and draft text of the proposed amendment. The reason ascribed in the application that few documents were produced on behalf of the defendants which necessitated the amendment, does not merit countenance. Those documents were referred to in the cross examination of Shankar, the deceased plaintiff. As he feigned ignorance, the defendants had placed those documents on record. The cross examination of the plaintiff, *prima facie*, shows that the facts which were sought to be introduced by way of proposed amendment were well within the knowledge of the plaintiff. The interdict contained in the proviso to Order 6 Rule 17 is thus clearly attracted.

10. The satisfaction of the Court that, in spite of due diligence, the plaintiff could not have raised the matter before the commencement of the trial is a jurisdictional fact. In the absence of proof of such

jurisdictional fact, the Court cannot allow the amendment as a matter of course after the commencement of the trial. (Vidyabai and Others vs. Padmalatha and Another¹.)

11. From the perusal of the draft of the proposed amendment, it becomes evidently clear that substantial and expansive averments are sought to be incorporated by way of amendment. The matters referred to therein date back to the stage prior to the commencement of the trial. I find substance in the submission on behalf of defendants that an endeavour has been made by the petitioners to carry out amendment in the plaint so as to offer an explanation with regard to the matters which have been elicited during the cross examination of deceased plaintiff.

12. In this view of the matter, the learned Civil Judge does not seem to have committed any error in declining to grant permission to amend the plaint at the fag end of the trial. The petition, therefore, deserves to be dismissed.

Hence, the following order.

ORDER

1] The petition stands dismissed.

2] No costs.

(N. J. JAMADAR, J.)

1 (2009) 2 Supreme Court Cases 409.