

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14867 OF 2024

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Date: 2025.02.15
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Shaila Pandurang Ukharde

...Petitioner

vs.

Gulab Namdev Pingal and Others

...Respondents

Mr. Satyajeet Dighe, for the Petitioner.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 13, 2025

ORDER

1. Heard the learned counsel for the parties.
2. The petitioner/ plaintiff assails an order dated 15th February, 2024 passed by the learned Civil Judge Junior Division, Dindori whereby the application preferred by the plaintiff for amendment in the plaint came to be rejected. The petitioner instituted a suit with the assertion that an area admeasuring 56R was also purchased by the plaintiff under the Sale Deed dated 12th January, 2010, apart from the area explicitly mentioned therein.
3. By the proposed amendment, the plaintiff professed to incorporate the averments in the plaint to the effect that, for the said additional area, the defendants had received an additional amount of Rs. 7,50,000/- by way of cheques and agreed to hand over the area in addition to the area explicitly mentioned in the sale Deed.

4. The learned Civil Judge was persuaded to reject the application as the bar under the proviso Order VI Rule 17 came into play and the plaintiff had not ascribed any reason for not seeking the said amendment before the commencement of the trial.

5. Mr. Dighe, the learned counsel for the petitioner, strenuously submitted that the proposed amendment is indispensable for the determination of the real question in controversy between the parties and if the proposed amendment is not allowed, the plaintiff would suffer irretrievable prejudice. Laying emphasis on the recitals in the Sale Deed, under the caption, “possession” wherein the vendors had acknowledged not to raise dispute about additional area which may be found to be part of the property sold thereunder, Mr. Dighe submitted that the proposed amendment does not change the nature of the suit nor does it cause any prejudice to the defendants. Mere delay cannot be a ground to reject the application for amendment in the plaint, if the amendment is otherwise necessary to decide the real question in controversy.

6. Mr. Dighe, placed reliance on the judgments of the Supreme Court in the cases of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Anr.**¹ and **Dinesh Goyal @ Pappu vs. Suman Agarwal (Bindal) and Ors.**².

1 2022 LiveLaw (SC) 729.

2 Civil Appeal arising out of SLP (C) No.30324 of 2019 Dt.24/09/24.

7. I have carefully perused the averments in the application and the orders passed by the learned Civil Judge. Incontrovertibly the amendment was sought after the commencement of the trial. Consequently the proviso to Rule 17 of Order VI came into play. In view of the said interdict it was incumbent upon the plaintiff to demonstrate that, in spite of due diligence, the plaintiff could not have raised the matter before the commencement of the trial. The said interdict is in the nature of jurisdictional condition. The Court must be satisfied that, despite due diligence, the party could not have sought the amendment before the commencement of trial.

8. In the case of **Vidyabai and Others vs. Padmalatha and Another**³ the Supreme Court has enunciate in clear and explicit terms that the proviso to Order VI Rule 17 is couched in a mandatory form. The Court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied i.e. it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial. The observations in paragraph 19 are material and hence extracted below:

19] It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on

3 (2009) 2 Supreme Court Cases 409.

exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.

9. Reverting to the facts of the case, it is imperative to note that the application for amendment in the plaint singularly lacks material to show due diligence. In fact, there is no reason to satisfy the test of due diligence. In the absence of such endeavour on the part of the plaintiff to demonstrate due diligence, the Courts jurisdiction to allow the amendment, despite commencement of the trial, becomes tenuous. In a sense, by not offering any explanation the plaintiff himself has disabled the Court from exercising the discretion to allow the amendment.

10. The reliance placed by Mr. Dighe on the decisions in the cases of **Life Insurance Corporation** (supra) and **Dinesh Goyal** (supra) does not advance the cause of the submission on behalf of the petitioner as the general propositions in the matter of amendment in the plaint are well settled. Those decisions do not assist the case of the plaintiff as the plaintiff fails to surmount the impediment of the proviso to Rule 17 Order VI.

11. In any event, if the additional amount of Rs. 7,50,000/- was paid much before the execution of the Sale Deed, especially towards additional area, then the failure to incorporate the same in the plaint, or for that matter seek amendment before the

commencement of the trial, seems even more inexplicable.

Resultantly, the petition does not deserve to be entertained.

12. The petition stands dismissed.

(N. J. JAMADAR, J.)