

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17771 OF 2024

Kiran Nivrutti Jadhav

...Petitioner

vs.

Bharat Muralidhar Tajane and Others

...Respondents

Mr. Prashant Malik, for the Petitioner.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 20, 2025

P.C:

1. The challenge in this petition is to an order dated 5th July, 2024 passed by the learned Civil Judge, Nashik whereby an application for amendment (Exh. 82) preferred by the petitioner under the provisions of Order 6 Rule 17 of the Code of Civil Procedure, 1908 (the Code) came to be rejected.

2. The petitioner instituted a suit for perpetual injunction to restrain the defendants from causing obstruction to the possession and enjoyment of the petitioner over the suit property and forcibly evicting the petitioner from the suit property.

3. The tenor of the plaint is that the plaintiff was in need of money. Defendant No. 1 and 2 assured to pay the consideration of Rs. 29,40,000/- in lumpsum. The plaintiff was made to execute a Sale Deed in favour of defendant Nos. 1 to 3 on 8th October, 2013. A false recital was incorporated in the Sale Deed that the plaintiff received the entire consideration. In fact, the plaintiff has not

received the consideration. On the basis of the said shallow Sale deed, the defendants were threatening to dispossess the plaintiff. Hence, the suit for perpetual injunction.

4. The suit was instituted in the year 2015. The issues were settled on 19th December, 2017. The parties led evidence. At the stage of final arguments, the petitioner filed an application (Exh.82) seeking to amend the plaint so as to incorporate a prayer that the Sale Deed dated 8th October, 2013 is null and void and liable to be set aside and does not bind the plaintiff.

5. By the impugned order, the learned Civil Judge was persuaded to reject the application as the plaintiff failed to satisfy as to why the plaintiff could not seek the amendment in the plaint before commencement of the trial. Moreover, the suit was for perpetual injunction and the proposed amendment would substantially alter the character of the suit. It would cause prejudice to the defendant.

6. The learned counsel for the petitioner submitted that on account of technical reasons, the plaintiff need not be non-suited. By the proposed amendment, the plaintiff merely seeks to add a prayer of declaration. It would not change the nature or character of the suit.

7. I have carefully perused the averments in the plaint and the

application for the amendment (Exh.82).

8. Evidently, the application for amendment was filed at the stage of final argument in the suit. The interdict contained in the proviso to Order 6 Rule 17 of the Code was attracted. It was incumbent upon the plaintiff to satisfy the Court as to why the plaintiff could not have raised the matter sought to be introduced by way of amendment before the commencement of the trial. However, the application for amendment (Exh.82) singularly lacks reason to satisfy the test of due diligence. In fact, no cause, much less satisfactory one, was sought to be ascribed for seeking the amendment in the plaint at such a belated stage.

9. In view of the pronouncement of the Supreme Court in the case of **Vidyabai and Others vs. Padmalatha and Another**¹ grant of amendment post the commencement of the trial is conditioned by the satisfaction of a jurisdictional fact, namely, the party seeking amendment must satisfy the Court that it could not have raised the matter before the commencement of the trial. In the absence of such due diligence, the Court would not be justified in granting the amendment.

10. Another factor which singularly bears upon the prayer for amendment is, the aspect of delay in seeking prayer for declaration. Indisputably, the plaintiff is the executant of the registered Sale

1 (2009) 2 Supreme Court Cases 409.

Deed under which the defendant Nos. 1 to 3 claimed title over the suit property. There is reference to the said transaction of the sale in the plaint. The knowledge about the existence of the Sale Deed can hardly be disputed. The Sale Deed is the basis of the suit for perpetual injunction.

11. In this view of the matter, the relief of declaration that the said Sale Deed is null and void and it is not binding on the plaintiff is clearly barred by law of limitation. It is well recognized that where the relief which is sought to be incorporated by way of amendment is barred by limitation the Court as a rule shall not allow such amendment. A useful reference in this context can be made to a decision of the Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Pvt. Ltd. And Anr.**².

12. Resultantly, this Court does not find any infirmity in the order passed by the trial Court so as to exercise extraordinary jurisdiction.

13. The petition therefore stands dismissed.

14. It is clarified that aforesaid observations are confined to the determination of the prayer for amendment in the plaint and the trial Court shall not be influenced by any of the observations while adjudicating the suit.

(N. J. JAMADAR, J.)

2 2022 SCC OnLine SC 1128.