

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.3882 OF 2025
IN
SUIT NO.322 OF 2021

Jatin Ashok Mehta .. Applicant.

In the matter between
Jatin Ashok Mehta .. Plaintiff.
v/s.
Sunil Ashok Mehta & Others .. Defendants.

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Adv. Rohaan Cama with Adv. Pheroze Mehta, Adv. Asha Bhuta and Adv. Ansul Bhuta, for the Plaintiff/Applicant.
Adv. Hrushi Narvekar with Adv. Sanmish Gala, for the Original Defendant No.1/ Respondent in Interim Application.
Adv. Indira Labde, for Defendant No.17.

CORAM: FIRDOSH P POONIWALLA,J.

RESERVED ON: 17th SEPTEMBER, 2025.
PRONOUNCED ON: 06th OCTOBER, 2025.

ORDER :-

1 This Interim Application has been filed seeking amendments to the Plaint and Interim Application No.248 of 2022.

2 In the Plaint, the following final reliefs have been sought by the Plaintiff:-

“(a) The Hon'ble Court be pleased to declare that the Plaintiff and Defendant No.1 are the Joint Owners in respect of the Flat No. 5 situated in the Express Building, 9 Forjett Hill, Mumbai

400 036 more particularly described in Ex "C" to the Plaint.

b) This Hon'ble Court be pleased to declare that Plaintiff have 1/9th Share in the Ancestral property more particularly described in Ex "C" to the Plaint being the estate of the Late Nanalal Chaganlal.

(c) This Hon'ble Court be pleased to declare null, void and not subsisting in law any Document executed by the Defendant on the basis of the Power of Attorney executed by the Plaintiff.

d) This Hon'ble Court be pleased to Order & Direct the Partition of the Flat No. 5 situated in the Express Building, 9 Forjett Hill, Mumbai 400 036 described in Ex "C" to the Plaint by metes and bounds and/or otherwise put the said Flat to Sale by private or public auction through Court Receiver, High Court, Mumbai and divide the sale proceeds and grant the Plaintiff 50% share of the Sale Proceeds.

e) This Hon'ble Court be pleased to issue a Permanent Order and Injunction restraining Defendant No. 1 or other Defendant/s or any one of them or any person claiming through or under them from in any manner transferring, selling, encumbering alienating creating third party rights or parting with possession of the said Flat and 1/9th Share in the Ancestral property described in the Ex "C" to the Plaint or any part or portion thereof in any manner under any agreement, arrangement or devise.

f) This Hon'ble Court be pleased to issue Permanent Order and Injunction restraining Defendant No.1 or any persons claiming through or under him from in any manner acting upon or in furtherance of the Development agreement for an on behalf of the Plaintiff on the basis of the Power of Attorney dated 30/12/2009 executed by the Plaintiff in favor of the Defendant No.1.”

3 By this Interim Application, an amendment has been sought to bring certain subsequent facts on record and to add the following

prayers in the Plaint:-

"26 (d) (i) This Hon'ble Court be pleased to declare null, void and not subsisting in law the Development Agreement dated 29th January, 2019 and the Development Agreement dated 5th April, 2021 which has been executed on the basis of the Power of Attorney executed by the Plaintiff.

26 (d) (ii) This Hon'ble Court be pleased to declare null, void and not subsisting in law the Permanent Alternate Accommodation Agreement dated 27th July, 2022 which has been executed on the basis of the Power of Attorney executed by the Plaintiff."

26 (d) (iii) This Hon'ble Court be pleased to direct Defendant No. 1 to deliver up Development Agreement dated 29th January, 2019, Development Agreement dated 5th April, 2021 and Permanent Alternate Accommodation Agreement dated 27th July, 2022 to this Hon'ble Court for Cancellation.

26 (d) (iv) Without prejudice to the rights and contentions of the Plaintiff and the challenge to the various documents, in the event that this Hon'ble is disinclined to injunct action pursuant to the impugned documents and / or disinclined to set aside the impugned documents, the Plaintiff prays that this Hon'ble Court be pleased to direct the Defendant No.1 and Defendant No. 17 developer by way of mandatory injunction to put the Plaintiff into Joint Possession of the New Flat/s to be allocated by the Developer to the Plaintiff's family's share."

4 The Interim Application also seeks to amend Interim Application No. 248 of 2022 to bring subsequent facts on record and to add the following prayers:-

"23(d)(i) Pending the hearing and final disposal of the above suit, this Hon'ble Court be pleased to direct the Defendants, their agents, servants, employees, person or persons claiming through him to be restrained by an order of injunction to act on the basis of the development agreement dated 29th January, 2019 and

Development Agreement dated 5th April, 2021 which has been executed on the basis of the Power of Attorney executed by the Applicant.

23(d)(ii) Pending the hearing and final disposal of the above suit, this Hon'ble Court be pleased to direct the Defendants, their agents, servants, employees, person or persons claiming through him to be restrained by an order of injunctio to act on the basis of the Permanent Alternate Accommodation Agreement dated 27th July, 2022 which has been executed on the basis of the Power of Attorney executed by the Applicant."

5 Mr. Cama, the learned Counsel appearing on behalf of the Plaintiff, pointed out that the present suit was filed on 4th January, 2021. Subsequent to the filing of the suit, the new Development Agreement dated 5th April, 2021 was executed between Defendant Nos. 1 to 16 and Defendant No.17. Further, a PAAA dated 29th July, 2022 was executed between Defendant No.17 and Defendant No.1 to give a new Flat No. 1002 to Defendant No.1. Mr. Cama submitted that Defendant No.1 filed a Written Statement dated 10th June, 2023, in which, the execution of the said Development Agreement dated 5th April, 2021 and the PAAA dated 29th July, 2022 was disclosed and also an averment made that Flat No.5-B is not owned but is a tenancy.

6 In support of his submissions, Mr. Cama took me through various paragraphs of the Complaint and the Written Statement. Mr. Cama also took me through the Schedule of amendments. Mr. Cama submitted that, in the aforesaid circumstances, the Plaintiff was required to amend the Complaint to bring the subsequent facts on record and to seek appropriate reliefs in respect of the said Development Agreement dated 5th April, 2021 and PAAA dated 29th July, 2022.

7 In support of his submissions, Mr. Cama relied upon the judgements of the Hon'ble Supreme Court in *Life Insurance Corporation of India v/s. Sanjeev Builders Private Limited (2022) 16 SCC 1* and *Sampath Kumar v/s. Ayyakannu and Another* (Civil Appeal No.5839 of 2002).

8 Mr. Cama submitted that, for all the aforesaid reasons, these amendments are required to be allowed.

9 On the other hand, Mr. Hrushi Narvekar, the learned Counsel appearing on behalf of Defendant No.1, opposed the granting of any reliefs in the Interim Application. Relying upon an Affidavit in Reply dated 3rd March, 2025 of Defendant No.1, Mr. Narvekar submitted that, in the amendments, the Plaintiff had changed his case from ownership of Flat No.5 to tenancy of Flat No.5. Mr. Narvekar further submitted that, in the Plaint, the Plaintiff had abandoned the case of tenancy, which is now sought to be introduced by way of these amendments. Mr. Narvekar further submitted that the pleas of the Plaintiff regarding tenancy and ownership are mutually destructive and, therefore, the amendments should not be allowed.

10 In this context, Mr. Narvekar drew my attention to certain paragraphs of the Plaint where the Plaintiff has described Flat No.5 as being owned. Mr. Narvekar submitted that, having done so, the Plaintiff has categorically elected to describe the flat as that being of ownership and has clearly abandoned the case of tenancy. Therefore, by virtue of these amendments, the Plaintiff ought not to be allowed to re-introduce the case of tenancy. Mr. Narvekar also submitted that the Plaintiff was seeking to withdraw an admission.

11 Mr. Narvekar further submitted that if the amendment was allowed, then prayer (a) in the Original Complaint would not survive. He submitted that this was one more reason as to why the amendments should not be allowed.

12 In support of these submissions, Mr. Narvekar relied upon the judgement of the Hon'ble Supreme Court in the case of ***Gautam Sarup v/s. Leela Jetly & Others (2008) 7 SCC 85***.

13 As far as the Plaintiff's challenge to the Development Agreement in the proposed amendments is concerned, Mr. Narvekar submitted that the same ought not to be allowed as it changes the nature of the Suit and, in any case, the challenge to the Development Agreement is barred by the law of limitation.

14 Mr. Narvekar submitted that the Development Agreement dated 5th April, 2021 is the same as the Development Agreement entered into on 29th January, 2019. In this context, he submitted that the cause of action arose in 2019 and, therefore, the challenge to the Development Agreement would be barred by the law of limitation.

15 It is the case of Mr. Narvekar that the limitation expired on 1st December, 2024 and the Interim Application was filed on 20th December, 2024.

16 In support of his submissions, Mr. Narvekar also relied upon the judgement of the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India (supra)***.

17 Ms. Indira Labde, the learned Advocate appearing on behalf of Defendant No.17, referred to prayer clause 26 (d)(iv) in the proposed amendments and submitted that the jurisdiction to granting such a relief would lie with the Small Causes Court. Further, she submitted that prayer (f) of the Original Plaint seeks an injunction only against Defendant No.1. She submitted that this showed that, at the time of filing of the Suit, the relief was not to halt redevelopment. She further submitted that, in these circumstances, redevelopment cannot now be challenged by the Plaintiff.

18 In Rejoinder, Mr. Cama submitted that the nature of the Suit would not change if the amendment was allowed. He submitted that the cause of action is deprivation of 50% share in flat No.5-B and the same remains unchanged.

19 Mr. Cama further submitted that the plea of tenancy and ownership are not ex-facie mutually destructive. Further, Mr. Cama submitted that the amendments are substantially for adding the averments and relief to the Plaint and the Interim Application and do not withdraw any admission. In this context, Mr. Cama referred to paragraph 27 of the judgement of the Hon'ble Supreme Court in the case of **Gautam Sarup (supra)**. Further, Mr. Cama submitted that, if the Plaintiff is accepting the Defendant's case as set out in the Written Statement, there can be no question of withdrawal of any admission.

20 Mr. Cama submitted that the challenge to the Development Agreement dated 5th April, 2021 and the PAAA dated 29th July, 2022 was not barred by the law of limitation, as the Plaintiff became aware of that only when the Written Statement was filed on 10th June, 2023, and,

thereafter, the Plaintiff filed the present Interim Application for amendment on 29th November, 2024. In support of his submissions on limitation, Mr. Cama referred to the judgement of the Hon'ble Supreme Court in the case of ***Pankaja & Another v/s. Yellappa (D) by Lrs. & Others (Civil Appeal Nos. 4983-4984 of 2004)*** and to the decision of this Court in the case of ***Renu B. Maru v/s. Bhupendra D. Tank & Others (Interim Application (L) No. 9590 of 2021 in Suit No. 422 of 2012)***.

22 I have heard the learned Counsel for the parties and perused the documents on record.

23 The law in respect of amendment is succinctly laid down by the Hon'ble Supreme Court in its judgement in ***Life Insurance Corporation of India (supra)***. Paragraphs 71.2 to 71.11 of the said judgement are relevant in this regard and are set out herein below:-

“71.2. All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order 6 Rule 17 CPC.

71.3. The prayer for amendment is to be allowed:

71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2. To avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party

which confers a right on the other side, and

(c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations)

71.4. A prayer for amendment is generally required to be allowed unless:

71.4.1. By the amendment, a time-barred claim is sought to be introduced in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.

71.4.2. The amendment changes the nature of the suit.

71.4.3. The prayer for amendment is mala fide, or

71.4.4. By the amendment, the other side loses a valid defence.

71.5. In dealing with a prayer for amendment of pleadings, the court should avoid a hyper-technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

71.6. Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

71.7. Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

71.8. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

71.9. Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is

arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

71.10. Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi 40)”

24 In my view, the fact that the amendment claimed that Flat No.5-B is a tenancy instead of ownership, does not change the nature of the Suit. As rightly submitted by Mr. Cama, the cause of action is deprivation of 50% share in the flat, which has not changed. In these circumstances, the nature of the Suit will not change if the said amendments are allowed.

25 Further, in my view, the pleas of the Plaintiffs are not mutually destructive. In the Plaint, the Plaintiff has claimed that the parties owned the flat. After it became clear from the Written Statement filed by Defendant No.1 that Defendant No.1 was claiming a tenancy in

respect of the flat, the Plaintiff has made a claim in that regard. In my view, there is nothing mutually destructive in this plea of the Plaintiff.

26 Further, the Plaintiff's proposed amendments challenging the Development Agreement dated 5th April, 2021 and the PAAA dated 29th July, 2022 also do not change the nature of the Suit. The Plaintiff has challenged the same as they have been disclosed in the Written Statement. The same does not change the cause of action i.e. deprivation of the share of the Plaintiff in the family property.

27 Further, in my view, the Plaintiff's challenge to the Development Agreement dated 5th April, 2021 and PAAA dated 29th July, 2022 is, *prima facie*, not barred by the law of limitation. The Plaintiff became aware of the said Development Agreement and PAAA when the Defendant No.1 filed his Written Statement on 10th June, 2023. The proposed amendments challenging these documents were sought by the Plaintiff by the present Interim Application which was filed on 20th December, 2024. In these circumstances, in my view, *prima facie*, the proposed amendments are not barred by the law of limitation.

28 Further, in my view, by these amendments the Plaintiff is not seeking to withdraw any admission as contended by the Defendants.

29 Further, as held by the Hon'ble Supreme Court in **Life Insurance Corporation (supra)**, in dealing with an amendment, the Court should avoid a hypertechnical approach and is ordinarily required to be liberal. Moreover, in my view, these amendments are required for effective

and proper adjudication of the controversy between the parties and to avoid multiplicity of proceedings.

30 For all the aforesaid reasons, I hereby pass the following order:-

- (i) The Interim Application is allowed in terms of prayer clause (a) thereof which reads as under:-

“(a):- That the Hon’ble Court may be pleased to allow the Applicant to amend the said Suit and the Interim Application as per the Schedule of Amendments annexed hereto.”

- (ii) Amendments to be carried out within a period of three weeks from the date of uploading this order, and a copy of the amended Plaint be served on the Defendants by that date;
- (iii) There will be no order as to costs.

(FIRDOSH P. POONIWALLA,J.)