



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 434 OF 2025

(Ravi s/o Nirmal Gyanchandani & Ors. Vs. Rambhau s/o Ragunath Nagthane & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. R.M. Tahaliyani, Counsel for the petitioners.

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CORAM : ANIL L. PANSARE, J.
FEBRUARY 4, 2025

The petitioners – original defendant nos. 2 to 4 are aggrieved by order dated 3/9/2024 passed below Exh. 56 by the Civil Judge Senior Division, Pusad, in Special Civil Suit No. 31/2022, thereby permitting amendment to the plaint after commencement of trial.

2] Respondent nos. 1 to 3 – original plaintiffs filed suit for cancellation of sale deed dated 11/3/2022 executed by respondent no.4 – original defendant no.1 in favour of the petitioners. Respondent nos. 1 to 3 filed application for amendment to incorporate additional ground for challenging the sale deed, *viz.*, it is barred by the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act (for short “the Fragmentation Act”) and also Government Resolution dated 19/12/2015.

3] The application was opposed on the ground that the amendment is sought after conclusion of cross-examination of the plaintiffs and that the amendment will change the nature of the suit.

4] The trial Court noted that though respondent nos. 1 to 3 have approached belatedly without sufficient cause, the nature of amendment is such that it would be necessary for just decision of the suit. To state differently, the trial Court has permitted amendment on the ground that it would go to the root of the case and is necessary for just decision of the suit.

5] The learned Counsel for the petitioners submits that the amendment would give rise to fresh cause of action.

6] I do not find substance in the said argument inasmuch as firstly, the said plea was not taken before the trial Court and secondly, the amendment would not, by any stretch of imagination, give rise to fresh cause of action. By way of amendment, respondent nos. 1 to 3 are seeking to add additional ground, which can be said to be a legal plea to substantiate the original prayer seeking cancellation of sale deed.

7] The Hon'ble Supreme Court in the case of *Dinesh Goyal alias Pappu Vs. Suman Agarwal (Bindal) and Others* [2024 SCC OnLine SC 2615] has dealt with the object of Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short "the Code"), in a case where a suit for partition was filed, and by way of amendment, the validity of Will was challenged. The question posed by the Supreme Court was whether the High Court fell in error in allowing the application seeking leave to amend the pleadings in contravention of the statutory language. The Supreme Court held as under :

“17. Any and all delays in judicial processes should be avoided and minimised to the largest extent possible, and should generally be, and are rightly frowned upon. However, not in all cases can delay determine the fate of a Suit. The defendant submits that the time gap between submitting the written statement to the Suit and the presentation of the application seeking leave to amend is unexplained. If this argument of the defendant is accepted, the question of Will shall remain undecided or at best will be decided with great delay. The trial which has admittedly already commenced, would be stalled by way of a challenge to the framing of issues which, in turn, would not be in consonance with the object of Order VI Rule 17 of CPC which is aimed at preventing multiplicity or multiple avenues of litigation, subsumed under the umbrella of one dispute.

18. Keeping in view the above, along with the fact that without determination of the question of Will and its genuineness, the partition of the Suit property would not be possible, we do not find any infirmity in the order of the High Court, allowing the amendment setting aside refusal of the Trial Court to grant such amendment.”

As could be seen, the Supreme Court has upheld the High Court’s finding in order to prevent multiplicity of litigations.

8] In the present case, same analogy could be applied. If respondent nos. 1 to 3 intend to examine the validity of the sale deed in the light of the provisions of the Fragmentation Act, refusal to test the validity of sale deed on the aforesaid ground would only result into multiplicity of proceedings, particularly when the plea is based on the provisions of law, the Fragmentation Act.

9] The learned Counsel for the petitioners has invited my attention to the judgment of the Supreme Court in the case of *Vidyabai And Others Vs. Padmalatha And Another [(2009) 2 SCC 409]* to firstly contend that this judgment has been not considered by the Supreme Court in *Dinesh Goyal's* case and, therefore, the judgment in the said case is *per incuriam* and secondly to contend that proviso to Order VI Rule 17 of the Code is mandatory and, thus, the Court's jurisdiction to allow application seeking amendment is taken away unless it comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial. The relevant paragraphs of the judgment read as under :

"18. Reliance has also been placed by Ms Suri on Rajesh Kumar Aggarwal v. K.K. Modi [(2006) 4 SCC 385]. No doubt, as has been held by this Court therein that the court should allow amendments that would be necessary to determine the real question of the controversy between the parties but the same indisputably would be subject to the condition that no prejudice is caused to the other side.

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 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on 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."

As could be seen, the Supreme Court in this case also, held that the Court should allow amendments that would be necessary to determine the real question of the controversy between the parties but subject to condition that no prejudice is caused to the other side. The Supreme Court further held that the primal duty of the Court is to decide as to whether the amendment sought is necessary to decide the real dispute between the parties.

10] Thus, the Supreme Court has not laid down a ratio that after commencement of trial, amendment to pleadings is outrightly barred. What has been held is that Court's jurisdiction to permit amendment after commencement of trial is restricted/limited. However, if amendment is necessary to decide the real dispute between the parties, the Court would be fully justified in permitting amendment to avoid multiplicity of proceedings and resolve the controversy completely. Similar is the finding rendered by the Supreme Court in *Dinesh Goyal's* case. I do not find that the Supreme Court has taken two different views in the above referred judgments. The argument that the judgment in Dinesh Goyal's case is *per incuriam*, is, therefore, incorrect.

11] The trial Court found that the amendment will go to the root of the case and accordingly allowed the same, which will avoid multiplicity of proceedings. The petitioners failed to show what prejudice will be caused to them if the sale deed is examined on the touchstone of the provisions of the Fragmentation Act. The order passed

by the trial Court, therefore, cannot be said to be perverse.

12] No interference is, therefore, called for in supervisory jurisdiction under Article 227 of the Constitution of India. The petition is dismissed in *limine*. No costs.

(ANIL L. PANSARE, J.)

Sumit