



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

WRIT PETITION NO.5497 OF 2024

Smt. B. Nandini Raju w/o Shri
Ramalinga Raju, aged 64 years, Occu –
Service, R/o 1242, Road No. 62,
Jubilee Hills, Hyderabad, through her
Power of Attorney Holder and
Authorised Representative, D.V.S.
Subbaraju s/o Krishnam Raju, aged 58
years, Occu. Business, R/o Flat No.
102, Dhanunjaya Nest, Rajiv Nagar,
Yousufguda, Hyderabad. (Original
Defendant 3)

...PETITIONER

VERSUS

1. Shri Raghuhari s/o Shri
Yogeshkumar Saraf, aged – 37
years, Occ. Business, R/o 193-C-
Western Avenue. Sainik Farm, New
Delhi. (Original Plaintiff 1)
2. Smt Sunandadevi w/o Shri
Yogeshkumar Saraf, aged 62 years,
Occu – Housewife, r/o 193-C-
Western Avenue, Sainik Farm, New
Delhi (Original Plaintiff 2)

Both through their authorized
representative and power of attorney

holder Shri Purushottam s/o Shri Ramkishan Sharma, r/o Plot No. 190, Lokmanya Nagar, Hingna, Nagpur.

3. M/s Jagdamba Realtors Pvt. Ltd., a company incorporated under The Companies Act, 1956, through its director, Shri Gopal Kondawar, having its registered office at 602, Nikalas Tower, 6th floor, Central Bazar Road, Ramdaspath, Nagpur (Original Defendant 1)

4. Shri Sudhakar s/o Shri Rajeshwar Komawar, r/o 108, Kalyani Apartment, Ramdaspath, Nagpur (Original Defendant 2)

5. Shri Hariprasad s/o Shri Sadhulal Shah, age 73 years, Occu not known r/o Extension No.2, 1st floor, Saraf Chambers, Sadar, Nagpur. (Original Defendant 4)

...RESPONDENTS

Shri U.A. Gosavi, Advocate for the petitioner.
Shri D.G. Paunekar, Advocate for respondent no.1.
Shri P.J. Mehta, Advocate for respondent no. 4.
Respondent nos.2 to 3 are served.
Shri G.K. Bhusari, Advocate for respondent no. 5.

CORAM : PRAVIN S. PATIL, J.
CLOSED ON : 27/02/2025.
PRONOUNCED ON : 17/03/2025

JUDGMENT :

Not on Board. Taken on Board.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. By way of the present petition, the petitioner is challenging the order below Exhibit 57 passed by the 17th Joint Civil Judge, Senior Division, Nagpur ('the Trial Court') in Special Civil Suit No.680 of 2009 (Re-registered as Regular Civil Suit No.2002 of 2012) dated 15.06.2024 by which amendment application filed by respondent nos.1 and 2 came to be allowed.

4. The present petitioner is the original defendant no.3, respondent nos.1 and 2 are the original plaintiffs and respondent nos. 3 to 5 are the original defendant nos. 1, 2 and 4 respectively, in the present petition.

5. The suit property involved in the petition is of that piece and parcel of land/immovable property admeasuring 2.03 H.R. bearing Khasra No.11 situated at Mouza Panjri (Lodhi), Patwari Halka No.73, Tq. And District Nagpur. (hereinafter referred to as "the suit property").

6. The case of the respondent nos.1 and 2 before the Trial Court is that when the plaintiff/respondent no.1 was minor, on 10.05.2009, his father has executed Power of Attorney ('POA') for and on behalf of present respondent nos.1 and 2 authorizing respondent no.5 to deal with the suit property.

7. On the basis of POA dated 10.05.2009, respondent no.5 had executed registered sale-deed of suit property in favour of respondent no.3 on 06.01.2004. As such, by virtue of alleged sale-deed dated 06.01.2004, suit property was transferred to respondent no. 3.

8. It is also stated that after execution of sale-deed dated 06.01.2004, there were further transactions of the suit property and by virtue of subsequent sale-deeds dated 11.03.2005 and 15.06.2006 suit property was transferred in the name of the petitioner.

9. On the basis of abovesaid factual position, present respondent nos.1 and 2 filed Special Civil Suit No.680/2009 (re-registered as Regular Civil Suit No.2002/2012) before the Trial Court on 22.06.2009 stating that in the month of February, 2009,

they first time came to know about the execution of registered sale-deeds dated 06.01.2004, 11.03.2005 and 15.06.2006 in favour of respondent no.3 and the petitioner.

10. The averment made by respondent nos.1 and 2 in their Civil Suit needs consideration for deciding the present petition. Therefore, I am referring their averments made in the plaint.

11. Respondent nos. 1 and 2 in their plaint made statement that POA dated 10.05.2009 was never executed and authenticated by the Registrar or Sub-Registrar within whose district they are residing. It is their contention that POA dated 10.05.2009 being not registered, as per the provisions of the Registration Act, 1908, said document is invalid and void document. As such, all subsequent transactions on the basis of said invalid POA including the sale-deed dated 06.01.2004 is invalid, illegal and destitute of any legal effect.

12. It is further stated by the respondent nos.1 and 2 in their suit that not only the sale-deed dated 06.01.2004 is *void ab initio* but subsequent transferees entered into the transaction vide sale-deeds dated 11.03.2005, 15.06.2006 are all *void ab initio*,

illegal and invalid. It is their submission that said subsequent transactions do not effect any transaction of rights, title and interest over the suit property and all the subsequent transferees acquires no interest in the suit property. Hence, such transaction does not require to be set aside by means of suit, and they are to be ignored as non-existent.

13. In paragraph 23 of the suit the statement made by respondent nos. 1 and 2 is reproduced as under :

“23. The plaintiffs most respectfully submits, that as the sale deed dated 6.1.2004 itself is ab initio void, as such, all subsequent transferees can only get any title, if there is any, in favour of defendant number 1, otherwise not. If the sale deed dated 6.1.2004 is bad in law, then consequently, all subsequent sale deeds executed by defendant number 1 in favour of defendant number 2 and subsequently the sale deed executed by defendant number 2 in favour of defendant number 3 all shall meet the same fate, and they are all liable to be ignored. The plaintiffs submits that the case in hand, is not a case where the transaction can be called as voidable, as the same is wholly void. It is settled law that if a document is invalid then it can be disregarded as it never existed. The plaintiffs submits, that the transaction dated 6.1.2004, was a void one and which is not required to be repudiated even, though the plaintiffs have disowned it the moment it came to their knowledge, as the same is per se invalid. In view of this, a transferee of such an alienation does not acquire any interest in the property and the said invalid transaction is not

required to be set aside. In view of this, the plaintiff is seeking possession of the suit property on the basis of their title. At the cost of repetition, the plaintiff submits that as the sale deed dated 6.1.2004, and all subsequent conveyances/sale deeds executed, and finally the sale deed dated 21.6.2006 executed in favour of the defendant number 3 are all per se invalid, ab initio void, and non-existent document and as such they need not be prayed to be either cancelled or set aside. The said documents are to be treated as if they never existed, and as such the instant suit seeking possession of the suit premises is being filed. The plaintiff submits that the limitation period for filing instant suit is 12 years under Article 65 of The Limitation Act, 1963, and as the defendant number 1 had claimed to have taken possession of the suit property under a void transaction that is sale deed dated 6.1.2004, the suit is well within the period of limitation and tenable in law.

14. On the basis of above said pleadings, respondent nos. 1 and 2 restricted their claim/prayer in the suit for grant of decree of possession of the suit property, perpetual injunction and damages only.

15. Present petitioner in response to the suit summons appeared before the Trial Court and submitted that her written statement on 09.03.2010. The present petitioner in her written statement, before the Trial Court categorically raised the preliminary objection about the tenability of the suit, on the ground that as per the averments in the suit, though respondent

nos.1 and 2 had admitted the execution of sale-deeds dated 06.01.2004, 11.03.2005 and 15.06.2006 through their POA, however there is no prayer for seeking declaration to set aside the sale-deeds. Therefore, in the absence of seeking relief of declaration, the suit is not tenable.

16. In addition to this, it was also specifically stated that respondent nos. 1 and 2 deliberately avoided to seek declaration of validity of sale-deeds, because once the declaration is claimed, the suit filed by them would be barred by limitation, and therefore, deliberately to avoid the bar of limitation, the relief is not claim by respondent nos. 1 and 2.

17. Petitioner in her written statement before the Trial Court made specific submission, which is reproduce as under :

“b. The answering defendant submits that the suit is bad in law and the reliefs sought by the plaintiff cannot be granted in view of the infirmities in the pleadings and the reliefs sought therein. It is the admitted case of the plaintiff that there were three intervening deeds of sale, whereunder, the defendant No. 4 acting as power of attorney of the plaintiff had sold the schedule property on 06/01/2004 to the defendant No. 1 and thereafter the defendant No.1 had sold the schedule property under a deed of sale dated 11/03/2005 to the defendant No.2. It is also the admitted case of the

plaintiff that the defendant No. 2 had sold the schedule property to the defendant No.3 under a deed of sale dated 15/06/2006. The plaintiff having acknowledged the factum of these three deeds of sale, has not bothered to seek a relief of setting aside all these deeds of sale and has instead sought a decree of possession of the suit schedule property. This answering defendant submits that the suit is clearly not maintainable, while the said deeds of sale continued to remain.

c. This answering defendant further submits that the period of limitation for filing a suit for setting aside the aforesaid deeds of sale expired long time back, inasmuch as, the plaintiff was fully aware of the deed of sale of 06.01.2004 and has chosen not to do anything for the past six years. Section 59 of the limitation Act postulates that; To cancel or set aside an instrument or decree or for the rescission of a contract period of limitation is three years (time from which period begins to run is when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him)

Thus, the instant suit has to be rejected being hopelessly barred by limitation and on the ground that the reliefs sought are not maintainable.”

18. In the background of above said factual position, the Trial Court framed issues, and since year 2014, the petition is pending for evidence before the Trial Court.

19. Near-about after a period of 14 years, respondent nos.1 and 2 filed an application for amendment and thereby prayed that they may be permitted to add prayer clause in the suit to declare that the sale-deeds dated 06.01.2004, 11.03.2005 and 15.06.2006,

which are registered with the Sub-registrar Office, be declared as null and void and same are not binding upon them.

20. The present petitioner by filing her reply to the amendment application vehemently opposed on various grounds. One of the ground of the petitioner was that the relief which claimed by respondent nos.1 and 2 by way of amendment, was very much available to them at the time of filing of the suit. Furthermore, in her written statement objection of tenability of suit was raised but respondent nos. 1 and 2 failed to take note of the same. As such, by considering the fact that their possession by virtue of sale-deed became perfect by passage of time, the petitioner will cause prejudice, if the amendment application is allowed. So also, it is pointed out that there is inordinate delay of more than 14 years in seeking the relief of declaration at the instance of respondent nos.1 and 2.

21. The learned Trial Court by the impugned order allowed the application by holding that, in the suit, pleading of respondent nos.1 and 2 in respect of sale-deeds is already available and they are only seeking declaration that said sale-deed be declared as *void*

ab initio and not binding upon them. As such, the proposed amendment is not introducing new case or claim, and therefore, the same deserves to be allowed. On the ground of delay, the learned Trial Court hold that delay can be compensated by imposing costs, and accordingly, imposed cost of Rs.1000/- on respondent nos. 1 and 2 and in respect of limitation to seek such declaration, the learned Trial Court kept open the issue of limitation to agitate at appropriate stage and stated that effect of proposed amendment will be considered from the date of filing of application.

22. The petitioner assails the impugned order of the Trial Court by stating that by considering the pleading of the suit and the written statement, it is clear that present respondent nos.1 and 2 are well aware that they have filed a suit without seeking declaration and it is their own submission that there is no need to seek declaration in respect of subsequent transactions. However, by way of amendment, they are, now, turned back and want to withdraw the said statement by introducing the challenge to sale-deed dated 06.01.2004 and subsequent sale-deeds.

23. Further submission of the petitioner is that, it was specifically brought to the notice of present respondent no.1 and 2 at the time of filing of written statement, that in absence of seeking declaration of setting aside all sale-deed, the suit is not tenable. However, this fact was not noted by the respondent nos.1 and 2 for about 14 years, and now, belatedly filed the application that too without any justification.

24. It is further submission of the petitioner that as per the provisions of the Limitation Act, 1963, for seeking declaration of any document, prescribed period of limitation is of 3 years from the date, when the right to sue first accrues. According to him, the rights to sue firstly accrues to respondent nos.1 and 2 on 06.01.2004, when the first sale-deed came to be executed. Therefore, limitation to obtain declaration expired on 06.01.2007 itself. Hence, the relief sought by the amendment is time barred, therefore, same cannot be allowed by way of amendment.

25. In support of this submission, the petitioner relied upon the judgment of the Hon'ble Supreme Court in the cases of *L.C. Hanumanthappa vs. H.B. Shivakumar* (2016) 1 SCC 332, *Basavaraj*

vs. Indira and ors (2024) 3 SCC 705, Anil s/o Ramsing Bilawar and ors. vs. Anita w/o Gopal Kadam and anr. 2022(2) Mh.L.J. 345, Life Insurance Corporation of India vs. Sanjeev Builders Pvt. Ltd. and anr. (2022) 16 SCC 1 and Chakreshwari Construction Pvt. Ltd. vs. Manohar Lal (2017) 5 SCC 212.

26. Respondent nos.1 and 2 stated that the impugned order of the Trial Court is legal and correct and need no interference of this Court. It is their submission that in the plaint there is already pleadings about the legality and validity of the sale-deed dated 06.01.2004 and subsequent sale-deeds executed between the parties. As such, by proposed amendment only prayer clause sought to be added which will cause no prejudice to the present petitioners.

27. In respect of delay in moving the application for amendment before the Trial Court, learned Counsel for the respondent nos.1 and 2 stated that respondent nos.1 and 2 were under impression that in the suit they have pleaded about the sale-deed elaborately, and therefore, there was no need to challenge the same. Hence, under this *bona fide* impression, the delay is caused

in filing the amendment application.

28. Respondent nos.1 and 2 further stated that due to some personal difficulty, previous Counsel appointed by them, handed over the case papers to them to engage another Counsel. On approaching to the another Counsel, while preparing the affidavit of evidence required under Order XVIII, Rule 4 of the Code of Civil Procedure, the Counsel realized that in support of submission made in the plaint, the prayer for declaration is necessary in the matter. Accordingly, on the advice of Counsel they have moved the application for amendment. Hence, it is the submission of respondent nos.1 and 2 that there is no delay on their part to move the amendment application as trial is not commenced in the suit.

29. In support of their submission, respondent nos.1 and 2 relied upon the judgment of the Hon'ble Supreme Court in the cases of *Civil Appeal No. 8446 of 2024 dated 05.08.2024 (Usha Devi and ors. vs. Ram Kumar Singh and ors.)* and *Harinarayan G. Bajaj and ors. vs. Reliance Capital Ltd. and anr. 2018(1) CCC 353*.

30. Present respondent nos.3 and 4 stated that they are supporting the petitioner and adopting the submission made by

petitioners in the present matter.

31. At this juncture, before proceeding to the merits of the case, let me consider the law relating to the amendments of pleading.

32. The settled rule is that the Courts should adopt a liberal approach in granting leave to amend pleading, however, the same cannot be in contravention of the statutory boundaries placed on such power. In *Pirgonda Hongonda Patil vs. Kalgonda Shidgonda Patil and ors. AIR 1957 SC 363*, which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real question in controversy between the parties. Amendment should be refused where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury, which could not be compensated in costs.

33. Recently, Hon'ble Apex Court in the case of *Life Insurance Corporation of India vs. Sanjeev Builders Pvt. Ltd. (supra)*, after considering numerous precedents in regard to the

amendment of pleading, culled out certain principles :

(i) 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 word “shall”, in the latter part of order VI Rule 17 of the Code of Civil Procedure;

(ii) Amendment for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings;

(iii) Amendments, while generally should be allowed, the same should be disallowed if, -

(a) By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party, which confers a right on the other side ;

(b) The amendment does not raise a time-bared claim, resulting in the divesting of other side of a valuable accrued right ;

(c) The amendment completely changes the nature of suit;

(d) The prayer for amendment is malafide ;

(e) By the amendment, the other side should not lose a valid defence;

34. The Hon'ble Supreme Court in the case of ***K. Raheja Construction Ltd. and anr. vs. Alliance Ministries and ors. 1995 Supp (3) SCC 17*** has made certain observations in paragraph 4, which read as below :

“4. It is seen that the permission of alienation is not a condition precedent to file the suit for specific performance. The decree of specific performance will always be a subject to the condition to the grant of the permission by the competent authority. The petitioners having expressly admitted that the respondents have refused to abide by the terms of the contract, they should have asked for the relief for specific performance in the original suit itself. Having allowed the period of seven years to elapse from the date of filing of the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963, any amendment on the grounds, set out, would defeat the valuable right of limitation accruing to the respondent.”

35. In the decision of the Hon'ble Supreme Court in the case of ***Vishwambhar and ors. vs. Laxminarayan (dead) thr. LR's and anr. (2001) 6 SCC 163***, observes in paragraph 9 as under :

“9. ... As noted earlier in the plaint as it stood before the amendment the prayer for setting aside the sale deeds was not there, such a prayer appears to have

been introduced by amendment during hearing of the suit and the trial court considered the amended prayer and decided the suit on that basis. If in law the plaintiffs were required to have the sale deeds set aside before making any claim in respect of the properties sold then a suit without such a prayer was of no avail to the plaintiffs. In all probability realising this difficulty the plaintiffs filed the application for amendment of the plaint seeking to introduce the prayer for setting aside the sale deeds. Unfortunately, the realisation came too late. Concededly, plaintiff no.2 Digamber attained majority on 05-08-1975 and Vishwambhar, plaintiff no.1 attained majority on 20-07-1978. Though the suit was filed on 30-11-1980 the prayer seeking setting aside of the sale deeds was made in December, 1985. Article 60 of the Limitation Act, prescribes a period of three years for setting aside a transfer of property made by the guardian of a ward, by the ward who has attained majority and the period is to be computed from the date when the ward attains majority. Since the limitation started running from the dates when the plaintiffs attained majority the prescribed period had elapsed by the date of presentation of the plaint so far as Digamber is concerned. Therefore, the trial court rightly dismissed the suit filed by Digamber. The judgment of the trial court dismissing the suit was not challenged by him. Even assuming that as the suit filed by one of the plaintiffs was within time the entire suit could not be dismissed on the ground of limitation, in the absence of challenge against the dismissal of the suit filed by Digambar the first appellate court could not have interfered with that part of the decision of the trial court. Regarding the suit filed by Vishwambhar it was filed within the prescribed period of limitation but without the prayer for setting aside the sale deeds. Since the claim for recovery of possession of the properties alienated could not have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December, 1985) by introducing

such a prayer by amendment of the plaint the prescribed period of limitation for seeking such a relief had elapsed. In the circumstances the amendment of the plaint could not come to the rescue of the plaintiff.”

36. In the case of *L.C. Hanumanthappa vs. H.B. Shivakumar (supra)*, the Hon’ble Supreme Court had recorded the findings in paragraphs 15 and 29 as under :

“15.....That doctrine, as I understand it, is that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; ...”

37. In the case of *Chakreshwari Construction Pvt. Ltd. vs. Manohar Lal (supra)* the Hon’ble Supreme Court in paragraph 13 has laid down certain principles, which require to be considered while allowing or rejecting the application for amendment. The same are read as under :

“13. The principle applicable for deciding the application made for amendment in the pleadings

*remains no more res integra and is laid down in several cases. In **Revajeetu Builders and Developers V. Narayanaswamy and Sons (2009) 10 SCC 84**, this Court, after examining the entire previous case law on the subject, culled out the following principle in para 63 of the judgment which reads as under :*

“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment. :

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) Whether the application for amendment is bona fide or mala fide;

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) As a general rule, the court should decline amendments if a fresh suit the amended claims would be by limitation on the date of application.”

38. Recently, Hon'ble Supreme Court in the case of *Basavaraj vs. Indira and ors (supra)* observed in paragraphs 13 and 16 as under :

“13. Initially, the suit was filed for partition and separate possession. By way of amendment, relief of declaration of the compromise decree being null and void was also sought. The same would certainly change the nature of the suit, which may be impermissible.

...

16. In the case in hand, the compromise decree was passed on 14.10.2004 in which the plaintiffs were party. The application for amendment of the plaint was filed on 08.02.2010 i.e. 5 years and 03 months after passing of the compromise decree, which is sought to be challenged by way of amendment. The limitation for challenging any decree is three years (Reference can be made to Article 59 in Part-IV of the Schedule attached to the Limitation Act, 1963). A fresh suit to challenge the same may not be maintainable. Meaning thereby, the relief sought by way of amendment was time barred. As with the passage of time, right had accrued in favour of the appellant with reference to challenge to the compromise decree, the same cannot be taken away. In case the amendment in the plaint is allowed, this will certainly cause prejudice to the appellant. What cannot be done directly, cannot be allowed to be done indirectly.”

39. This Court in the case of *Anil s/o Ramsing Bilawar and ors. vs. Anita w/o Gopal Kadam and anr. (supra)* in paragraph 17

observed as under :

“17. It is further material to note that through the learned trial Court has while allowing the amendments, kept the issue of limitation open for adjudication, that however, cannot be a justification, for allowing the amendment, without compliance with requirement of the proviso to Order VI, Rule 17 of CPC. That apart, the dictum as laid down in L.C. Hanumanta (supra), that the Courts will as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application, would also be attracted, in view of the undisputed position, in the present matter, that the plaintiffs were aware of the documents of sale, as of 22-10-2012 in SCS No.513 of 2011, on account of its disclosure, in the affidavit in lieu of evidence, Exh-98 as filed by the plaintiff therein, which would make the claim viz-a-viz the said two sale deeds clearly barred by limitation and merely keeping the point of limitation open, would be of no use, other than dragging the purchasers in to litigation, the result of such a plea, being forgone.”

40. The question that falls for consideration, in the above backdrop, whether the Trial Court fell in error in allowing the application seeking leave to amend pleading, in contravention of the statutory language.

41. In the present case, respondent nos. 1 and 2 by way of amendment, seeks permissions to add prayer clause in the suit, to the effect that “sale deed dated 06.01.2004, 11.03.2005 and

15.06.2006 or any other transactions took place *inter se* in between defendants on the basis of so called power of attorney dated 10.05.2009 are null and void and same are not binding upon plaintiffs.” The perusal of averment/pleading of the suit made it clear that, respondent nos. 1 and 2 knowing that sale-deeds are executed before filing of the suit, restricted their prayer for possession, perpetual injunction and damages only. It is noteworthy that, the petitioner on their appearance in suit, filed written statement and raised specific ground that in absence of prayer for declaration that sale deed executed *inter se* between the parties are null and void, suit is not maintainable. However, respondent nos. 1 and 2, for a period of 14 years, kept silent in the suit. But now, want to seek declaration by adding prayer in the suit by way of amendment application. Allowing such amendment would amount to permit respondent nos. 1 and 2 to reverse their stand than what they have pleaded in the suit. Such amendment as per the settled principles of law, not permissible.

42. It is now well settled proposition of law, that where plaintiff in a suit seeks permission to amend a fresh claim in respect of cause of action which since the date of institution of the

suit had become barred by limitation, cannot be permitted to brought on record. As per Article 58 of the Limitation Act, limitation prescribed to challenge the legality and validity of sale deed or for seeking declaration of same is 3 years. In the present case, from own averment of respondent nos. 1 and 2 in suit, the right accrued in favour of them on the date of execution of first sale deed dated 06.01.2004 or at the most when they got knowledge about the execution of same. Taking any date into consideration, it is clear that, cause of action to seek declaration of any of the sale-deed is barred by limitation. Therefore, as per the law laid down in case of *L.C. Hanumanthappa vs. H.B. Shivakumar (supra)*, the amendment application deserves to be rejected.

43. In the present case, it is admitted fact that by virtue of sale-deed dated 11.03.2005, respondent no. 4 became the owner of suit property. Thereafter, respondent no. 4 by registered sale-deed dated 15.06.2006 sold the suit property to the petitioner. In such circumstances, the petitioner since year 2006 is in possession of suit property. Under relevant provisions of law, her right is now created over the suit property. Therefore, allowing amendment application, which is filed after an inordinate delay without any justification,

would certainly cause great prejudice to petitioner and same cannot be compensated in terms of costs.

44. In the present matter, respondent nos.1 and 2 found to be not diligent in prosecuting their cause. The amendment application is filed after 14 years of filing of suit. But in the amendment application, only reason stated that earlier Counsel handed over the case papers to them with a request to engage another Counsel. Accordingly, they had engaged another Counsel, who at the time of preparing affidavit/evidence realized that prayer of declaration in respect of subsequent sale deed is necessary. As such, reasons put forth by respondent nos. 1 and 2 while seeking amendment seems to be very casual. No satisfactory explanation is given for a period of 14 years delay. As such, as per settled position of law, if party found to be negligent or not acted diligently or remained inactive, is not entitled to any relief. Hence, considering the delay on the part of respondent nos. 1 and 2, I am of the view that learned Trial Court committed error by allowing amendment application.

45. It is stated that the case of the petitioner is squarely

covered by the judgment of the Hon'ble Supreme Court in the cases of *Basavaraj vs. Indira and ors. (supra)* and *Vishwambhar and ors. vs. Laxminarayan (supra)*. In that case also, the suit was filed within the prescribed period but without prayer for declaration and same was sought by way of amendment. The Hon'ble Supreme Court in both cases, held that by introducing the prayer for setting aside the sale-deeds would change the nature of suit, which is impermissible. Therefore, the amendment to the suit held not justified as same would cause prejudice to the petitioner. It is observed that what cannot be done directly, cannot be allowed to be done indirectly.

46. Likewise, in the case of *L.C. Hanumanthappa vs. H.B. Shivakumar (supra)*, it is observed that amendment should be refused where other party cannot be placed in the same position as if the pleading had been originally corrected and further which could not be compensated in costs. As such, cause of action which is barred by limitation must be refused.

47. Hence, considering the above said legal position and the facts of the present case, the learned Trial Court committed an error by allowing the amendment application.

48. The learned Trial Court in the impugned order had kept open the issue of limitation by holding that the said issue will be considered from the date of filing of the amendment application. In this regard, it is stated that the co-ordinate Bench of this Court in the case of *Anil Bilawar vs. Anita (supra)*, already held that merely keeping the point of limitation open, would be of no use other than dragging the parties into litigation. Hence, considering the law laid down by this Court, the issue of limitation which is kept open is also illegal and incorrect.

49. Learned Counsel for the respondent nos. 1 and 2 relied upon the judgment in the case of *Harinarayan G. Bajaj vs. Reliance (supra)* to state that relief sought by the parties should not be refused on technical and pedantic grounds, once submission is born out in the pleading, then Court has its jurisdiction/discretion to grant relief and accordingly, the relief granted by the Trial Court is justified. He further relied on the judgment of the Supreme Court in *Civil Appeal Nos. 8446 of 2024 dated 05.08.2024 (Usha Devi and ors. vs. Ram Kumar Singh and ors.)* to state that the amendment of suit are to be allowed which are necessary for determining the real question in controversy. However, in both the

judgments, it is held that amendment should be allowed provided it should not cause injustice or prejudice to the other side. In the present case as already pointed out that present petitioner would cause great prejudice and injustice due to time barred claim made by way of amendment, the judgments relied upon are not helpful to him.

50. In view of the above, I proceed to pass following order :

- (i) The Writ Petition is allowed.
- (ii) Order passed by 17th Joint Civil Judge, Senior Division, Nagpur below Exhibit 57 dated 15.06.2024 in Special Civil Suit No.680 of 2009 (Re-registered as Regular Civil Suit No.2002 of 2012) is quashed and set aside.
- (iii) Amendment application filed by respondent nos. 1 and 2 below Exhibit 57 in Special Civil Suit No.680 of 2009 (Re-registered as Regular Civil Suit No.2002 of 2012) is hereby rejected.
- (iv) No order as to costs.

51. Rule is made absolute in above terms.

(PRAVIN S. PATIL, J.)