



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

WRIT PETITION NO.6197/2024

Shri Chetan S/o Purushottam Borkute

...Versus...

Smt. Nilima W/o Satish Wankhede and others

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

Court's or Judge's orders

Mr. S.A. Kalbande, Advocate for petitioner
Mr. J.D. Bastian, Advocate h/f Mr. Prakash Naidu, Advocate for respondent Nos.1 to 3
Ms A.A. Pande, Advocate for respondent Nos.4 and 5

CORAM : SACHIN S. DESHMUKH, J.

DATE : 13/08/2025

1. The petitioner raises a challenge to the judgment rendered by the Civil Judge Senior Division, Nagpur in Regular Civil Suit No.1065/2019 rejecting an application for amendment. The plaintiff/petitioner has presented the suit for declaration, permanent and mandatory injunction. Essentially the suit is filed seeking declaration that the plaintiff be declared as adopted son and legal heir of deceased and defendant No.2 with further prayer to declare that the sale-deed executed by deceased is invalid.

2. During pendency of the suit, in the wake of the certain developments, which according to the petitioner are in relation to the subject property, such as the filing of suit which is filed with collusion to commit fraud on petitioner without impleading the petitioner as a party to the said suit is compromised and decree is passed in terms of said

compromise and the same is done to defeat the right of the petitioner and the suit property has been developed. As such, the petitioner has right to get developed property and further prayer for seeking possession of those developed properties to the extent to which the petitioner is entitled. As such, presented an application under Order VI Rule 17 of the Code of Civil Procedure.

3. The application presented by the petitioner was resisted by the respondent submitting that the proposed amendment is not really necessary for determining the real issue raised in the suit between the litigating sides. It was further submitted that it does not require for effective and proper adjudication of the controversy between the litigating sides. The amendment would result serious prejudice vis-a-vis it would materially alter the nature of the suit and is presented with mala fide intention by setting up the entire new case. As such, prayed for rejection of the application.

4. The trial Court while considering the nature of suit vis-a-vis the proposed amendment holding that the attempt of the petitioner is to set up new case as it would change the nature of the suit drastically and because it would cause prejudice to the defendant and subsequent events are not necessary for determining the real question in controversy between the litigating sides eventually rejected the application.

5. Raising challenge to the order rejecting amendment, learned Counsel for the petitioner has submitted that the amendment is necessary in the light of subsequent events and these are not barred by law of limitation, therefore, prayed to allow the application by setting aside the order of learned trial Court.

6. Per contra, learned Counsel for the respondent has supported the order and submitted that the proposed amendment is not really necessary for determining the real issue raised in the suit between the litigating sides. It was further submitted that it does not require for effective and proper adjudication of the controversy between the litigating sides. The amendment would result in serious prejudice vis-a-vis it would materially alter the nature of the suit and is prayed with mala fide intention by setting up the new case. As such, prayed for rejection of the application.

7. In order to determine the question raised in the present petition it would be appropriate to reproduce the provisions contained in Rule 17 of Order VI of the Code of Civil Procedure. Rule 17 reads as under :-

“Rule 17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the

commencement of trial.”

8. From bare perusal of these provisions, it is evident that it consists of two parts. First part is in relation to the Court may at any stage of the proceedings allow either party to alter or amend pleadings, whereas second part is that such amendments shall be made for the purpose of determining the real questions in controversy raised between the litigating parties.

9. Thus, this provision confers discretion on the Court to allow the amendment of pleading to the party in such manner and on such terms as it appears to the Court as just and proper.

10. The object is to prevent frivolous applications which are filed to delay the trial. From bare perusal of this provision and the statement of object and reason it is evident that if the application is filed under Order VI Rule 17 of the Code of Civil Procedure same cannot be allowed unless the Court comes to the conclusion that such amendment is rather necessary to decide the issue raised in the suit. It is well settled that the Code of Civil Procedure is a procedure which is designed to facilitate the justice. The object of prescribing the procedure is to advance cause of justice. Thus, the provision in an unequivocal manner casts an obligation on the litigant presenting the application for amendment to offer an explanation to the satisfaction of the Court so as to render the conclusion that the same is done with an intent to render a complete decision on the issue. The satisfaction of the Court

that application for amendment is rather warranted, same is not filed to delay the trial is paramount. What is necessary is sufficient explanation and the particular circumstances which would reflect in application seeking amendment whenever it is filed to enable the Court to reach conclusion in relation to the subject matter of the suit.

11. Thus, the trial Court has rightly concluded that the nature of suit would drastically change in the wake of the proposed amendment. The further finding is rendered that it will cause prejudice to the defendant, as such same cannot be allowed and these subsequent events pertinently are not necessary for determining the real controversy between the litigating parties in the original suit. Thus, the discretion exercised by the Court while rejecting the application presented by the petitioner is rather reasonable one. As such, no error could be noted in the order rendered by the learned trial Court. Consequently the writ petition sans merit. Accordingly, the same is dismissed. No order as to costs.

(SACHIN S. DESHMUKH, J.)