



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

WRIT PETITION NO. 7376 OF 2018

PETITIONERS : Anilkumar S/o Gangadhar Patki
Aged about : 67 years,
Occupation : Retired,
R/o 7/7 Jantar Mantar Road,
New Delhi
(DEAD) Through his legal heirs

1. Smt. Vijaya Wd/o Anilkumar Patki,
Aged about : 67 years,
Occupation : Retired,
R/o 7/7 Jantar Mantar Road,
New Delhi

2. Mrs. Pooja W/o Tushar Mandlekar,
Aged about : 42 years,
Occupation : Service,
R/o L037, Yashwant Nagar
Nagpur- 440033

3. Mrs. Shraddha Amar Deshpande,
Aged about : 38 years,
Occupation : Retired,
R/o 7/7 Jantar Mantar Road,
New Delhi

Vs.

RESPONDENTS: 1. Amit S/o Ashok Patki,
(Dead) Through his Legal Heirs

1(a) Smt. Aarti Wd/o Amit Patki
Age : 40 years,

1(b) Ku. Avantika D/o Amit Patki
Age : 11 years, through natural
guardian mother (1)(a)
R/o Plot No.220, South Ambazari
Road, Bajaj Nagar, Nagpur

2. Smt. Nisha Wd/o late Ashok Patki
Aged about : 59 years,
Occupation : Household & Business,
R/o Plot No.220, South Ambazari
Road, Bajaj Nagar, Nagpur
3. Ku. Namrata D/o late Ashok Patki
Aged about : 32 years,
Occupation: Household & Business
R/o Plot No. 220, South Ambazari
Road, Bajaj Nagar, Nagpur
4. Mrs. Apeksha W/o Nishant Gorle
Aged about 28 years,
Occupation: Service,
R/o My Home Jewel, Amethyst
Block, Flat No. 1007, Sy. No. 83 &
97, Madinaguda, Hyderabad (A.P.)
5. Satish Patki S/o late Gangadhar
Patki,
Aged about: 62 yrs.
Occupation: Business,
R/o 7/7 Jantar Mantar Road,
New Delhi
6. Mrs. Mona W/o Kishor Pagey
Aged about: 49 years,
Occupation: Housewife
R/o Flat No. C-10, Sinhgad
Apartment, State Bank Staff
Cooperative Housing Society, Near
Utsav Mangal Karyalaya, Shiksak
Nagar, Near Vanaz Corner, Poud
Road, Kothrud, Pune 411038
7. M/s Maple Infra Projects
Plot No. 65, West High Court Road,
Shankar Nagar, Nagpur, A
partnership Firm through its
Partner, Shri Atul S/o Manoharrao
Yemsanwar

8. Atul S/o Manoharrao Yemsanwar
Aged about 48 years,
Occupation: Business,
R/o Plot No. 32, Khare Town,
Dharampeth, Nagpur
9. Mangesh Kashikar,
Aged about: 42 years,
Occupation: Business,
R/o 65, WHC Road, Shankar Nagar,
Nagpur
10. Yeshwant S/o Yadavrao Kashettiwar,
Aged about 45 years,
Occupation: Business,
R/o Jagat Millennium,
Amravati Road, Nagpur
11. M/s NANI's Buildcon Pvt. Ltd.,
8th Rasta Chowk, WHC Road, Laxmi
Nagar, Nagpur through its
Managing Director,
Shri Yeshwant Khodke
12. Shri Yeshwant Khodke
Aged about: 55 years,
Occupation: Business
Managing Director of Nani's
Buildcon Pvt. Ltd.
8th Rasta Chowk,
WHC Road, Laxmi Nagar,
Nagpur

Dr. B.G. Kulkarni and Mr. T.D. Mandlekar, Advocates for Petitioners
Mr. Abhijit Khare, Advocate for Respondent Nos. 1(1)(b) and 2 to 4
Mr. H.A. Khedikar, Advocate for Respondent Nos.5 and 6
Mr. B.C. Pal, Advocate for Respondent No.7 and 8
Mr. Alok Daga, Advocate for Respondent No. 9
Mr. S.S. Voditel, Advocate for Respondent Nos.11 and 12

CORAM: **SACHIN S. DESHMUKH, J.**

RESERVED ON : 20.08.2025

PRONOUNCED ON: 26.09.2025

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties at the stage of admission.

2. The plaintiffs/petitioners instituted a Special Civil Suit for declaration and partition in relation to agreement to sell executed in the year 2013 between the defendants. In response to the suit summons, the respondents have presented their written statement. Pursuant to filing of the written statement, pleadings were completed, as such, issues were framed by the trial Court.

3. Preceded by framing of issues, evidence was adduced by the plaintiffs. However, on account of the renewal of agreement to sale in the year 2018, the petitioners presented application under Order VI Rule 17 of the Code of Civil Procedure (for short, "CPC") requesting to incorporate paragraphs 14-A, 14-B, 14-C & 14-D and consequential prayer in relation to the renewal agreement of contract for sale pertaining to suit land. The respondents resisted the application presented by the petitioners, seeking amendment in plaint. The learned trial Court has considered the fact of

revival of the agreement is on 24.04.2018. The request was put-forth to incorporate the consequential amendment. The contention put-forth on behalf of the respondents that the proposed amendment is barred by limitation. Although there was no objection by defendant Nos.11 and 12 to the said amendment, though was sought to be challenged by way of amendment, the trial Court considering the merits of the application at the juncture where the application for amendment was presented and rendering the findings that the challenge sought to be incorporated by way of proposed amendment is prima facie barred by limitation and further observing that the attempt is to prolong the matter and abuse of process of law, resultantly rejected the application.

4. Dr.B.G. Kulkarni, learned counsel for the petitioners has submitted that the application for amendment presented by the petitioner is in the wake of revival of the agreement between the defendants. The revival has admittedly taken place in the year 2018. As such, the trial Court has committed serious error while considering the merits of the application, at the juncture of considering amendment application itself, is impermissible. As such, prayed to allow the application for amendment.

5. Per contra, Mr. Abhjit Khare and Mr. Khedikar learned counsel for respondent Nos.1 to 5 and 7 to 10 have supported the order submitting that the amendment is barred by limitation and further is aimed at to protract the suit, therefore, prayed for dismissal of the petition.

6. Having heard the learned counsel for the respective sides, it is matter of record that the suit is instituted in 2013, in relation to following prayers:-

"(i) grant a decree of declaration and declare that the alleged will dated 11.11.1998 alleged to have been executed by Late Shri Gangadhar Balkrishna Patki is a fabricated and manipulated instrument obtained by exercising under influence and hence the said alleged Will dated 11.11.1998 is an unenforceable instrument being null and void in the eyes of law.

ii) grant a decree of declaration and declare that defendant No.1 for himself and defendant Nos. 1 to 4 as legal heirs of Late Shri. Ashok Gangadhar Patki cannot claim to be the absolute and exclusive owners of the suit property by virtue of alleged Will dated 11.11.1998 alleged to have been executed by Late Shri. Gangadhar Balkrishna Patki.

iii) Pass a decree of partition and separate possession of the suit property granting 1/4th share in favour of the plaintiff and 1/4th share jointly in favour of defendant Nos.1 to 4, 1/4th share in favour of defendant No.5 and 1/4th share in favour of defendant No.6.

iv) declare that the compromise decree dated 08.01.2013 in Special Civil Suit No. 1356/2010 being fraudulent in nature it is nullity in the eyes of law and the said compromise decree dated 08.01.2013 in Special Civil Suit No. 1356/2010 be cancelled accordingly.

v) In the alternative hold and declare that the plaintiff is entitled in law to purchase the suit property on "as is where is" basis for a consideration of Rs. 3 Crores to the exclusion of defendant Nos.1 to 6 and to become the absolute and exclusive owner thereof in exercise of the right of pre-emption.

vi) In view of relief claimed under clause (v) above defendant Nos.1 to 4 be directed to execute the sale deed of the suit property for a consideration of Rs. 3 Crores and defendant Nos.5 and 6 be directed to grant their consent for the sale deed and the plaintiff be put in peaceful possession of the suit property simultaneously with execution of the sale deed.

vii) grant a decree of permanent injunction restraining defendant No. 1 to 12 from alienating the suit property or any portion thereof in any manner and from creating third party interest as well as from changing the nature of the suit property in any manner.

viii) Decree the suit with costs.

ix) Grant any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case."

7. It is well settled in view of the catena of judgments of Hon'ble Supreme Court as well as this Court that all amendments are to be allowed, which are necessary for determining the controversy, provided that the same does not change nature of suit and cause prejudice to the other side, which is apparent from the language employed in Order VI Rule 17 of the CPC. To decide the controversy involved in the present matter, it will be profitable to refer to the judgment of the Hon'ble Apex Court in the matter of *Life Insurance*

Corporation of India Vs. Sanjeev Builders Private Limited and another, (2022) 16 SCC 1. Relevant observations in the said judgments are reproduced hereinbelow :-

"71. Our final conclusions may be summed up thus:-

71.1.

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)"

8. Admittedly, in the present matter, the revival of the agreement is in the year 2018. The said aspect is also not disputed by the respondents herein. As such, the proposed amendment would be rather necessary for effective and

proper adjudication of the controversy in relation to which the parties are before the Court. Same would rather avoid multiplicity of the proceedings. Equally, the proposed amendment is not aimed to withdraw any admission which confers the right in favour of the other side. The contention from the respondents that the time barred claim is sought to be incorporated by way of amendment will have to be considered by the trial Court and cannot embark upon determination of the claim being time barred or otherwise while considering the application for amendment.

9. As a matter of fact it was not open for trial Court to consider the merits of proposed amendment, while considering application for amendment as held by the Hon'ble Apex Court in the matter of *Usha Devi Vs. Rijwan Ahamd and others, AIR 2008 SC 1147*.

10. In any case, it was for the trial Court to avoid hyper-technical approach being adopted and necessarily the Courts must consider the proposed amendments essentially would facilitate the determination of dispute. It appears that the trial Court has ignored the fact that the respondents have opportunity to meet out case, as such, in any case, it does not

result in causing prejudice to the respondents. Therefore, the proposed amendment necessarily ought to have been allowed. However, the trial Court has committed serious error while recording the finding as same is time barred when it is a subsequent event of revival of agreement in relation to suit property, occurred in the year regarded 2018, as such, it cannot be regarded by any stretch of imagination a time barred. Nonetheless, it was not open for the Trial Court to consider merits of the proposed amendment. Resultantly, the trial Court has committed error while not exercising discretion in accordance with the settled principles of law. Accordingly, the petition is allowed. The impugned order is set aside. The application for amendment (Exhibit-77) stands allowed.

11. Considering that the suit is of the year 2013, the trial Court is requested to make an endeavour to decide the suit within a period of one year from today.

12. Rule is made absolute in the above terms. No order as to costs.

[SACHIN S. DESHMUKH, J.]

M.P. Deshpande