

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

WRIT PETITION NO.3559/2024

Krishna s/o Vasant Rao Mahalle and others
Vs.
Hiraman s/o Chindu Aglawe and others

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

Court's or Judge's orders

Shri S.S. Sitani, Advocate for petitioners

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 24/01/2025

Heard learned Counsel for the petitioners.
None for the respondents in spite of service.

2. The present petition is filed challenging the order dated 19.03.2024 passed by the 2nd Joint Civil Judge Junior Division, Nagpur in Special Civil Suit No.711/2011 below Exhibit- 88 and also order dated 13.11.2022 passed by learned 2nd Joint Civil Judge Junior Division, Nagpur below Exhibit -87.

3. The plaintiff moved an application for grant of permission to amend the plaint under Order 6 Rule 17 of the Code of Civil Procedure. The suit was filed for partition and separate possession. It appears that during the pendency of the suit, plaintiffs came to know that defendants have executed sale-deeds of plots to the prospective purchasers on the suit property by creating unauthorized layout on the suit

property without the consent and authority of the present plaintiffs as those sale-deeds are not binding on the plaintiffs. In view of this subsequent events and the plaintiffs sought permission to amend the plaint by addition of paragraph No.6A to 6 AV. He also seeks permission to amend the prayer clause below Exhibit-88 and also order passed by learned Joint Civil Judge Junior Division Nagpur below Exhibit 87.

4. It is the contention of the learned Counsel for petitioner that during the pendency of appeal, the petitioner got knowledge about sale-deeds executed in favour of the proposed parties to be added and, therefore, it was necessary to avoid multiplicity of litigation and to prolong, if any, decree passed in favour of plaintiff.

5. The learned Counsel for petitioner relied on ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Ors. 2022 (6) ABR 67***, wherein the Hon'ble Apex Court issued certain principles which are to be considered while deciding application for grant of permission to amend, which are in paragraph No.70 which reads as under:

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 Code of Civil Procedure operates as a bar against a Subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleading falls

far beyond its purview. The plea of amendment being barred o pleadings at Rule 2 Code of Civil Procedure is, thus, misconceived and hence negated.

rea all amendments are to be allowed which are necessary for determining the tha question in controversy pravowed which are necessary for deferrejudice to the other side. This is mandatory, as is apparent from the use of the word

"shall", in the latter part of order Vi Rule 17 of the Code of Civil Procedure. (iii)

The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and (ii) 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 does 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).

(iv) A prayer for amendment is generally required to be allowed unless

(i) 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,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or (iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) 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.

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

(ix) 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.

(x) 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.

(xi) 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 and Ors., MANU/DE/2236/2022)”

6. It appears that the learned Civil Judge Junior Division, held that the application for addition of parties and amendment are filed at a belated stage without there being any evidence to be led about the knowledge of the petitioner about the sale-deeds.

7. The learned Counsel for petitioner also relied on ***Pravinchandra and others Vs. Hemantkumar and Ors., 2023:BHC-NAG: 16159***, Writ Petition No.2099/2023 decided on 03.11.2023, wherein this Court observed as under:

“11. The contention that the proposed amendment is not necessary for deciding the real controversy between the parties is clearly misconceived for by the proposed amendment, the transfers affected in respect of the suit properties by the respondents, are being brought on record and a relief is being claimed that while deciding the claim and right of the petitioners these transactions be taken into account, which is a position which will be necessarily be required to be taken into consideration by the Court for passing an effective decree.

12. The principle of lis pendens, does not always have the statutory effect for which it was enacted, for on occasions, on account of third party interests created during the pendency of the lis, even after getting a decree, the Decree Holder is required to face litigation at the behest of such transferees, who by raising one objection or the other, have a tendency to postpone the execution of the decree, considering which, if such transferees are made parties to the suit itself, the Court is then capable of deciding the pleas raised by them, which would then bound them, effectively.”

8. As such, the order passed by the learned Civil Judge Junior Division is without considering the principles laid down by the Hon'ble Apex Court in the judgment of *Life Insurance Corporation of India (supra)*.

9. It ought to have considered that such amendment needs to be allowed to avoid multiplicity of litigation. The learned Civil Judge Junior Division ought to have allowed the application for addition of parties under Order 1 Rule 10 of the C.P.C. As such, parties proposed to be added are definitely going to suffer and their interest is likely to be affected. As such, no prejudice would cause to either of the parties.

10. In my considered opinion, the sale-deeds which are executed, were not during the pendency of the suit. Therefore, the proposed defendants may agitate their rights even after passing of the decree in favour of plaintiff. As such, impleadment of those parties would avoid further litigation.

11. Accordingly, the writ petition is allowed. The orders passed below Exhibits 87 and 109 and order passed below Exhibit 88 are hereby quashed and set aside. The application below Exhibit 87 as well as 88 are allowed and application below Exhibit 109 is rejected.

12. Learned Counsel for plaintiff to carry out amendment within three weeks from the date of the order passed by this Court.

JUDGE