



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 4854 OF 2024

Sau. Nirmalabai Shankar Ingle
Aged : 70 yrs, Occ. Household,
Through Power of Attorney
Holder Shankar Rambhau Ingle;
aged 75 years; Occ. Agriculturist,
R/o Paturda Bk. Ta. Sangrampur,
Distt. - Buldhana

... PETITIONER

...VERSUS...

1. Shankar Shaligram Wankhade,
Aged : 56 yrs, Occ.: Agriculture
2. Dinkar Shaligram Wankhade
Age : 51 yrs; Occ : Agriculturist,
Both R/o Paturda Bk.Ta. Sangrampur,
Distt.- Buldhana, Pin - 444201

...RESPONDENTS

Dr. R.S. Sirpurkar, Advocate for petitioner
Shri H.R. Gadhia, Advocate along with Shri Anilket Sawal, Advocate for respondents

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 03/02/2025

DATE OF PRONOUNCING THE JUDGMENT: 27/02/2025

JUDGMENT

. Heard both the parties. By consent of parties matter is taken for final hearing at the stage of admission.

2. Being aggrieved by the order dated 29/06/2024, passed by Ad-hoc District Judge-1, Khamgaon, in Regular Civil Appeal No. 23/2018, thereby, rejected the application moved by the petitioner under Order 6 Rule XVII r/w 151 of CPC for amendment of plaint that, due to blocking the cart-way by the respondents, the appellant's land has turned into a barren land and not useful for cultivation.

3. It is the contention of the petitioner that petitioner has purchased the suit property from one Roji Pundalik, Anusayabai and Shubhash Wankhede on 10/05/1991 through sale deed. The Agreement to sale, stated that the southern side of the remaining area of the block no. 104 is used as cart-way road and is connected to the north-south, Government road on eastern side of block 104, and the said cart-way road has long standing usage before the purchase of the suit property by the petitioner.

4. Petitioner moved an application before the Tahsildar. On 14/10/2011, Circle Officer respondent No. 1 and 2 filed their reply, wherein, respondents stated that, they have not blocked the way and will not block the cart-way road. Based on this submission, petitioner withdrew the proceedings before the Tahsildar on 05/11/2012 and started using the said cart-way road without any obstruction by the respondents.

5. On 01/06/2013, respondents started ploughing their field and prohibited and threatened petitioner from using cart-way road. The said incident was reported to the Police Authority by the petitioner, however, no actions were taken, therefore, petitioner filed a suit for declaration and permanent injunction in Regular Civil Case No. 21/2013 before Civil Judge Junior Division, Sangrampur, for his right to way from the field property of respondent No. 1 and 2 to petitioner's suit property. The said suit came to be rejected by the learned Civil Judge Junior Division, Sangrampur, on 06/08/2018, on the ground that petitioner failed to prove the existence of the cart-way road from the field of respondents and the said cart-way road has long standing usage.

Being aggrieved by the judgment passed by the learned Civil Judge Junior Division, Sangrampur, petitioner filed an appeal before the learned District Judge, Khamgaon, in R.C.A No. 23/2018. An application under Order 6, Rule 17 of the CPC was moved in R.C.A No. 23/2018 before the learned District Judge, Khamgaon, wherein, petitioner prayed to amend the plaint. The said application came to be rejected by the Ad-hoc District Judge-1, Khamgaon, on ground that, petitioner sought amendment at appellate stage without justification that proposed amendment was not sought before the commencement of the trial. The aforesaid order is subject matter of challenge in the present writ petition.

6. Learned counsel for the petitioner contended that the amendment application under Order 6 Rule 17 of the CPC, moved by the petitioner, shows that the facts incorporated by the petitioner in amendment application was based on subsequent development which has taken place after commencement of the trial. Petitioner's land was under cultivation before the commencement of trial. It is during trial that the land could not be cultivated as respondent blocked the cart-way road to the petitioner's land and after few

years the land turned barren therefore petitioner moved an amendment application at appellate stage. This fact is not properly taken into consideration by the learned Lower Appellate Court and passed an impugned order which needs interference by this Court and which needs to be set aside.

7. Learned Counsel for petitioner relied on following citations :

(I) Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another, (2022) 6 AIR Bom 67.

(ii) Pandit Ishwardas Vs. State of Madhya Pradesh and others, (1979) 4 SCC 163.

(iii) Mahila Ramkali Devi and others Vs. Nandram (Dead) through L.Rs. and others, (2015) 13 SCC 132.

8. Learned counsel for the respondent supported the judgment passed by the lower court and further contended that the petitioner sought amendment at appellate stage and therefore, this is not the stage to amend the plaint. It is further contended that the by virtue of the proposed amendment the appellant is trying to change the nature of the suit. This fact is rightly taken into consideration and rightly passed an impugned order which needs to

be confirm.

9. I have heard both the learned counsel. Perused impugned orders. Considered the citation relied on by the petitioner. It appears that petitioner herein filed application before the Ad-hoc District Judge - 1, Khamgaon, for grant of permission to amend the plaint at the stage of final argument. By way of this amendment petitioner submitted that at the time of preparation of arguments, it was noticed that as the easementary way of right blocked by the respondents, there are no cultivation and there are trees and shrubs grown, the land is not remained fit to cultivate. It is his contention that by way of clarification he is seeking amendment. It is a matter of record that the present petitioner filed RCS No. 21/2012, for declaration of easementary right and for injunction. The said suit was dismissed after recording due evidence and hearing. The application was strongly opposed by the present respondent. The learned Ad-hoc District Judge, Khamgaon, rejected the application on the ground that the suit was filed in the year 2013, it was decided in the year 2018 and the appellant is seeking the amendment in the year 2024 i.e. after the decade from the date

of filing of suit. There is no justification that as to why proposed amendment was not sought before the commencement of trial. It is also observed by the learned District Judge that "it is very significant to mention here that even if the appellant is trying to pose that only he is willing to bring on record the facts post to the filing of the suit but on perusal of the proposed amendment it seems that more than 90% of the proposed amendment is related to the facts."

10. I have gone through the amendment application as well as order passed by learned Appellate Court. None of the fact mentioned in the proposed amendment are subsequent at all. Moreover, the last portion of the proposed amendment speaks that field was lying idle since 2013, and there are big trees grown in the field. It is a matter of record that learned Trial Court dismissed the suit as plaintiff failed to prove any easementary right over the suit property. Moreover, the facts in the proposed amendment were well within the knowledge of petitioner before filing of suit itself. So far as growing of trees is concerned in his field, it cannot be said to be a subsequent events to be brought on record.

11. Learned counsel for the petitioner relied on *Life Insurance Corporation of India* (supra), wherein, Hon'ble Apex Court laid down certain principles while deciding application for amendment. Those are also reproduced in the order passed by the Ad-hoc District Judge. True it is that amendment is generally required to be allowed, however, in the present matter, there is no justification whatsoever why the said amendment was not moved in the Trial Court, before commencement of trial or even during the trial. Under the garb of subsequent events such amendment can not be allowed nor the proposed amendment is necessary for determining the real question in controversy. Even reply to this application, if perused, the respondent placed on record certain land revenue record about yield and submitted that in 2015-16 the petitioner herein cultivated the land and taken yield of Cotton Jawar. In the year 2022-23, the petitioner taken yield of Tur, Cotton, Gram, and Onion etc. In 2023, the petitioner sown Soybean and obtained an insurance under Prime Minister Scheme. In view of revenue record, there is no substance in the contention that field was lying idle. True it is that while granting amendment, merits of the amendment need not be seen, however, the amendment which

is sought for is without any justification and could have been applied for before trial as he was well aware of the facts. Those are not at all subsequent events as alleged.

12. Learned counsel for petitioner relied on ***Pandit Ishwardas*** (supra) wherein Hon'ble Apex Court in paragraph No.5 observed as under :

“5. There is no impediment or bar against an appellate Court permitting amendment of pleadings so as to enable a party to raise a new plea. All that is necessary is that the appellate Court should observe the well known principles subject to which amendments of pleadings are usually granted. Naturally one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment and, if made at the appellate stage, the reason why it was not sought in the trial Court. If the necessary material on which the plea arising from the amendment may be decided is already there, the amendment may be more readily granted than otherwise. But, there is no prohibition against an appellate Court permitting an amendment at the appellate stage merely because the necessary material is not already before the Court.”

However, this citation is of no help to the petitioner as in this petition there is delay in making application seeking such amendment is more than 10 years and no reason was given why it

was not sought in the Trial Court.

13. Learned counsel further placed Reliance on ***Mahila Ramkali Devi*** (supra), in this matter also the Hon'ble Apex Court observed that while deciding amendment application all that is necessary that the Appellate Court should observe the well-known principle subject to which amendment of pleadings are usually granted. Naturally one of the circumstances, which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment, and if made at the appellate stage, the reason why it was not sought in the Trial Court. In view of this also, I do not see any fault in the order dated 29/06/2024 and 07/07/2023, passed by the learned Ad-hoc District Judge - 1, Khamgaon, in RCA No. 23/2018. As such, there is no merit in the petition, the petition stands dismissed.

(SMT. M.S. JAWALKAR, J.)

Jayashree..