



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

WRIT PETITION No.4861 OF 2024

(Rajkumar s/o. Shamlal Jaiswal (dead), through LRs. Manorama Rajkumar Jaiswal and others Vs. Sau. Pushpatai w/o. Keshavrao Korpe (dead), through LRs. Sau. Rajas w/o. Pradeep Dhande, through her POA holder Shri Keshavrao Ramkrishna Korpe)

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

Court's or Judge's orders.

Mr. R.V. Gahilot, Advocate for petitioner.
Mr. V.R. Deshpande, Advocate for respondent.

CORAM : R.M. JOSHI, J.

DATE : 18th JUNE, 2025.

1. The defendant in R.C.S. No.148/2012 challenges order passed by the trial Court below Exh.-170 on an application filed by the plaintiff under Order VI Rule 17 for amendment to the plaint.

2. The facts, as they appear from the record indicate that the respondent-plaintiff filed suit with following prayers :

“(1) A decree for possession of the slab roof described in para no.1 of the plaint and the defendants be directed to remove the construction made by them on the slab roof of the plaintiff's shop and on their failure to do so, it be directed and decreed that the same may be removed through the Court agency in execution filed by the plaintiff at the cost of defendants.”

3. Undoubtedly, suit property is construction made on slab roof of plaintiff's shop. Filing of the suit with this prayer indicates that plaintiff is not in possession of the suit property.

4. It seems that during the course of hearing an application was moved by the defendant for recasting of the

issues. The issues were recasted by order dated 9.3.2023 passed below Exh.-167. Since the issues are recasted, plaintiff moved this application Exh.-170 for amendment to the plaint. Amongst other contentions it is sought to be pleaded by the plaintiff that she was in possession of the property admeasuring 405.35 sq.ft. since the date of sale-deed as the owner thereof continuously without interruption and adversely.

5. The question before this Court is as to whether such pleadings which are totally inconsistent with the plaint and the prayers made therein and in fact mutually destructive can be permitted to be brought on record by amendment.

6. Learned counsel for the petitioner submits that merely because the issues are recasted, that by itself doesn't give any rise to the plaintiff to make an application for amendment and the merit of amendment needs to be seen. According to him, in any case the amendment which is totally inconsistent with the original pleadings could not have been allowed.

7. Learned counsel for the respondent-plaintiff submits that there is a pleading with regard to ownership of the plaintiff in respect of suit property. It is his submission that after recasting of the issues, cause of action arose for the plaintiff to amend the plaint. It is his submission that no declaration has been sought by the plaintiff in respect of ownership by adverse possession. Thus, it is his contention that on the basis of change in circumstances the plaintiff is rightly permitted to amend the plaint.

8. As recorded above, sole question arises for determination is as to whether the plaintiff can be permitted to

claim that he is owner of the suit property by way of adverse possession when the suit is filed for seeking possession of the suit property. This plea sought to be taken is mutually destructive to the plea initially raised in the plaint. These two pleas are mutually so inconsistent that they cannot be permitted to be raised.

9. It is sought to be canvassed that the order of recasting of issues is not in consonance with pleadings but since the same is already passed, it is within right of plaintiff to amend plaint. Though the plaintiff has not challenge the said order, mere recast of issue would not automatically give right to her to seek amendment of the plaint. Needless to say that issues are required to be framed on the basis of pleadings and not vice versa. The Trial Court ought to have considered the merit of application and after considering the pleadings in plaint, it would not have permitted to raise such plea which is wholly inconsistent with the original plea in the plaint. The order impugned, therefore, cannot sustain and hereby set aside. Application Exh.-170 stands dismissed.

10. Learned counsel for the respondent submits that the respondent be given liberty to challenge the order passed by the trial Court of recasting of the issues. If it is permissible in law, it is open for the respondent to do so.

11. The petition stands allowed in above terms.

(R.M. JOSHI, J.)