



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6872/2024

Kamalkumar Satyanarayan Agrawal,
Aged 45 years, Occ. Business
R/o C 1901, Godrej Anandam,
Ganeshpeth, Nagpur 440018

... PETITIONER

...VERSUS...

1. Aruna @ Arpita W/o Vallabhram Trivedi
Aged 72 Years, R/o K-14/3.
Jantabar, Varanasi, Uttar
Pradesh. Through POA holder
Ajay Vasantrai Trivedi,
Aged about 63, Nikalas Mandir Road,
Itwari Nagpur - 02
- 2 Ajay Vasantrai Trivedi, Aged
64 Years, Nikalas Mandir Road,
Itwari, Nagpur-440002
- 3- Shri Ramkrishna Co-op
Housing Society Ltd. through
its Secretary having its office at
Rahatekar Wadi, Tulsibagh Road,
Mahal, Nagpur,
- 4 Anilkumar Shambhulal Shrivastav,
Aged about 64 Yrs Occ. Business,
R/o Plot No.67 Rahatekar Wadi,
Tulsibagh Road, Mahal, Nagpur

5. M/s Purushottam Construction and Land Developers through its partners Shri Purushottam Hore, Age 49. R/o: Flat No. 401 Plot No.52 Sai Angan Appartment. Atrey Layout near Raj Rajeshwar Mandir, Rana Pratap Nagar, Nagpur 440022
6. Manpreet Singh Anand
Aged 44 Years, Oce Business
R/o Behind Sherakothi, Plot No.9/10 Devi Nagar, Ambedkar Marg, Nagpur-440017
7. Pankaj Khemraj Mane
Aged 40 Years Oce Private
R/o Quarter No.6/54, Raghuji Nagar, Near Kamgar Kalin Bhavan, Nagpur-440009
8. Adv. Anil Bhargavrao Raje
Aged 65 Years, Oce Advocate
R/O 107/108 Sai Prasad Apartment Near Mahatma Fule Sabhagrah, Reshimbagh, Nagpur 440009
9. Ajay Vastani Trivedi
Aged 63 Years Occ Business
10. Ashok Vasantraai Trivedi
Aged 67 Years Occ. Business
11. Naresh Vasantraai Trivedi
Aged 67 Years Occ. Business
12. Manjula Harshai Raj Ojha
Aged 74 Years, Oce. Housewife

Respondents No.9 to 12.
All R/o Nikalas Mandir Road,
Itwari, Nagpur

...RESPONDENTS

Dr. R.S. Sirpurkar, Advocate for petitioner
Shri Anand Parchure, Advocate along with Shri Abhijeet Khare, Advocate for
respondent No.1

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

DATE OF RESERVING THE JUDGMENT : 30/01/2025

DATE OF PRONOUNCING THE JUDGMENT: 06/02/2025

JUDGMENT

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

2. Present petition is filed by the petitioner challenging the order passed below application for amendment of plaint, whereby, amendment application of the plaintiff came to be allowed. So also present petition challenging the order on application under Order 1 Rule 10 of plaintiff for granting permission to delete the name of defendant No.8, the same came to be allowed. Both these orders came to be passed on 21/09/2024, by 11th Joint Civil Judge Senior Division and ACJM, Nagpur.

3. The facts as mentioned in the petition can be summarized as under :

Respondent No.1 is the original plaintiff in Special Civil Suit No. 1353/2023 and respondents Nos. 2 to 11 are original defendants in the said suit. The suit was filed for declaration and permanent injunction before the 11th Joint Civil Judge Senior Division, Nagpur. Original plaintiff/respondent No. 1, had moved an application under Order 6 Rules 17 of the Code of Civil Procedure praying to amend the plaint in terms of the amendment proposed in the application. Original plaintiff also preferred an application under Order 1 Rule 10 of the Code of Civil Procedure, praying to delete original defendant No.8, from the array of defendants. Both the applications were allowed. The said orders are under challenge in this petition.

4. It is contention of the petitioner that though application for amendment is moved on the ground that the plaintiff wants to place on record subsequent events, however, there is no truth in the submission of the plaintiff. It is contended that after filing of written statement when plaintiff realized that the

suit was filed by her power of attorney holder Ajay Trivedi, who also was arrayed as defendant No. 8, in personal capacity in the said suit. Therefore, in order to put herself out of such mischief, the original plaintiff in order to escape such malice, sought to prefer an application under Order 1 Rule 10, of the Code of Civil Procedure, seeking to delete defendant No. 8, from the array of defendants and also moved an application for amendment, contending that by virtue of such amendment plaintiff seeking to bring on records of subsequent developments.

5. It is further submitted that, in plaint, before amendment, it has clearly been admitted that physical possession taken by defendant No.1, which is contrary to the very pleadings of the plaintiff, in her plaint, wherein, it has clearly been admitted that physical possession lost by the plaintiff and it was the original defendant No.1, who was in possession of the property. It is further contention that when plaintiff pleaded in the plaint that when she visited the suit property on 12/11/2023, she found a board of the Velvet Project and the entire property was compounded by tin sheets. Thus, from perusal of such averments, it can be said that the

proposed amendment pertains to fact prior to filing of suit, is well within the knowledge of the plaintiff and cannot be said to be subsequent development. It is contended that the learned Trial Court failed to consider that proposed amendment changes the nature of the suit. It is also contended that both the orders i.e. order under Order 6 Rules 17, as well as under Order 1 Rule 10, of the Code of Civil Procedure are untenable. Applications are preferred by original plaintiff have been signed and affirmed by the original defendant No. 8, being the power of attorney holder. As such, The application under Order 1 Rule 10, the original defendant No. 8, is seeking to delete himself from the array of defendants.

6. Learned Counsel for the respondents, original plaintiff and others opposed the petition on the ground that the amendment which is filed prior to commencement of trial needs to be allowed liberally. In Paragraph No. 15 of the plaint it is already pleaded by the plaintiff that there was Special Civil Suit No. 68/2011, which was filed by the defendant No. 1, Society, and in the said suit order of status quo was directed. As such, till the dismissal of suit as withdrawn, parties maintained status quo and after dismissal, the

plaintiff visited the suit property on the occasion of Diwali i.e. on 12/11/2023. However, there was a board of Velvet Project by Velvet Infra and it's mobile number affixed on the suit property having been compounded by tin sheets. However, by way of amendment, the plaintiff seeks permission to add paragraph Nos 17-A, 18-A and 25-A to 25-F, after paragraph No. 25 and amendment in prayer clause. As such, there is no perversity or error in the order passed by the learned 11th Joint Civil Judge Senior Division and ACJM, Nagpur.

7. I have heard both the parties at length. Considered the citation relied on and perused the application for amendment, reply thereto, and order passed on application for amendment as well as application for permission to delete the name of defendant No. 8. So far as application under Order 6 Rule 17 is concerned, it appears that the plaintiff proposed to bring on record subsequent facts by way of proposed amendment. Though, it is contended that the plaintiff has taken in original plaint in paragraph No. 15, that on 12/11/2023, plaintiff got the knowledge that in suit property the board is affixed of Velvet Project by Velvet Infra, having been

compounded by tin sheets. In my considered view, so far as proposed paragraph No. 17-A, cannot be said to be subsequent events as it is in respect of earlier suit filed by defendant No.1 i.e. SCS/68/2011. The plaintiff was very much aware about the dismissal and it is reflecting in paragraph Nos. 15, 16 and 17 of the plaint. So far as paragraph No. 18-A is concerned, it is already appears to be pleaded in paragraph Nos. 18 and 19 of the original plaint. Moreover, these facts cannot be said to be subsequent events. So far as proposed amendment for addition of paragraph Nos. 25-A to 25-E are concerned, they can be taken on record being subsequent events. There is no need to go into the merits or genuinity of the said proposed amendment at this stage, as Trial is yet to begin. These events can be taken on record. While deciding the application for amendment, the Court should not go into the correctness or falsity of the case in the amendment.

8. It is contended by learned Counsel for petitioner that by way of proposed amendment of paragraph No. 25-F, is concerned, the plaintiff was trying to fill up the lacuna which he failed to comply at the time of filing of the suit. Order 7 Rule 3, of

the Bombay Amendment requires that if suit is in respect of immovable property it should be attached with description of plots, fourboundries, sketch map in case of encroachment. This Rule 3 as amended by Bombay High Court, further reads as *"In case of encroachment a sketch showing as approximately as possible the location and extent of encroachment shall also be filed along with plaint."* Thus, in my considered opinion, even if, this amendment is allowed, by which, the plaintiff seeks permission to place on record map in compliance with Order 7 Rule 3 of the Code of Civil Procedure, in absence of such map, if there is a description of the property, sufficient to identifying it or it can be identified by boundaries or numbers in a record of settlement of survey. The plaintiff shall specify such boundaries or number.

9. In view of subsequent events, if allowed to bring on record, the consequential amendment in prayer clause, proposed amendment will not change the nature of context between the parties.

10. The learned Counsel for petitioner relied on ***Asian hotels (North) Limited Vs. Alok Kumar Lodha and others, (2022) 8***

SCC 145, in support of her contention that by permitting the plaintiff to amend the plaint including a prayer clause, nature of the suit is likely to change, the Court would not be justified allowing the amendment. In the matter before the Hon'ble Apex Court in **Asian Hotels** (supra), held that :

“High Court while allowing the amendment application in exercise of powers under Order 6 Rule 17 did not properly appreciate and/or consider the fact that as such, by granting amendment and permitting the plaintiffs to amend the plaint Incorporating the prayer clause to declare the respective charges/mortgages void ab initio, the nature of the suits will be changed, when the suits in question were filed seeking a decree of declaration that the licence in favour of the plaintiff in respect of shop/premises is irrevocable and perpetual and the purported revocation of the licence by the defendant is illegal, void and bad in the eye of the law.”

11. Whereas, in the present matter, the plaintiff seeking amendment to bring subsequent facts on record and if such facts are allowed to be taken on record the consequential prayer also needs to be allowed. In the judgment relied by petitioner is distinguishable from the facts in present matter. In the said matter, by way of amendment of the plaint, the plaintiff wants to challenge the mortgage charges on the entire premises created by the Asian hotels. As per appellant/ hotels, mortgage was created in the year

1982, and at that time none of the original plaintiffs were licence holder. They were granted licence for illegal shops at the premises from 1983 onward. As such, The original plaintiffs are not at all concerned with the mortgages created by the appellant/hotel, which is required for the continuous development of the hotel. By the purported amendment, the plaintiffs prayed to declare that all the mortgages/charges created on the premises as *void-ab-initio*. The Hon'ble Apex Court held that the order passed by the High Court, allowing the application under Order 6 Rule 17 of the Code of Civil Procedure is unsustainable, both on facts as well as law.

12. So far as application for deletion of defendant No. 8 is concerned, I do not see any perversity or illegality in the order. The learned Trial Court has duly considered that plaint is signed by defendant No.8, being a power of attorney holder for plaintiff, therefore, he is competent to file present application. The plaintiff may seek permission to delete the name of defendant No. 8, as he is not the necessary party. It is rightly held that being the power of attorney holder, defendant No. 8, may depose on behalf of plaintiff. Therefore, it would be just and proper to delete the name of

defendant No. 8, from the array of defendants, I do not see any perversity or error in the order deleting the name of defendant No.8. For the reasons recorded and in view of the observations, petition needs to be partly allowed. Hence, I proceed to pass the following order :

ORDER

1. Writ Petition is partly allowed.
2. Order passed below application under Order 6 Rules 17, in Special Civil Suit No. 1353/2023, dated 21/09/2024, passed by 11th Joint CJSD and ACJM, Nagpur, modified as under:

(i) The application for amendment to the extent to amend 25-A to 25-F, as mentioned in the application in paragraph number (iii), as well as amendment as to prayer clause in paragraph (iv) are allowed.

(ii) So far as proposed amendment of paragraph Nos. 17-A and 18-A, as mentioned in the application in paragraph No. (i) and (ii), are here by rejected.

(iii) Plaintiff shall carry out the amendment within two weeks from the passing of this order.

3. The order passed below application under Order 1 Rule 10, in Special Civil Suit No. 1353/2023, dated 21/09/2024 passed by 11th Joint CJSD and ACJM, Nagpur, is hereby confirmed.

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

Jayashree..