IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

5 WRIT PETITION NO. 15035 OF 2023

Vyankat Manik Dudhbhate
Age: 59 years, Occ.: Agri.,
R/o. Lamjana, Tq. Ausa,
Dist. Latur. ….Petitioner
(Orig. Defendant)

VERSUS

Vilas Diliprao Ambure
Age: 42, Occu.: Business & Agri.,
R/o. Lamjana, Tq. Ausa,
Dist. Latur. …..Respondent
(Orig. Plaintiff)

Appearance :

Mr. Suraj R. Bagal h/f Mr. B. N. Gadegaonkar, Advocate for the Petitioner

Ms. A. N. Ansari, Advocate for the Respondent

CORAM : HITEN S. VENEGAVKAR, J.
DATE : 27.10.2026

ORAL JUDGMENT :

. **RULE**. Rule made returnable forthwith. With the consent of the parties, the petition is taken up for final disposal.

2. Heard the learned Advocate for the petitioner and the learned Advocate for the respondent.

3. The petitioner is the original defendant in Regular Civil Suit No.02/2015 and challenges the order dated 12.09.2023 passed by

the learned 2nd Joint Civil Judge, Junior Division, Ausa below Exhibit – 120. By the impugned order, the learned Trial Court permitted the respondent – original plaintiff, to amend the description of the suit property and introduce further averments concerning the construction allegedly undertaken by the defendant, including the construction of a toilet. The amendment was allowed subject to payment of costs of Rs.1000/-. For convenience, the parties are referred to by their status before the learned Trial Court.

4. The plaintiff instituted the suit for perpetual injunction in respect of a house site situated at Village Lamjana, Taluka - Ausa, District - Latur. In the plaint, the suit property was described as Gram Panchayat House Serial No.1407, bearing Property No.C-8/16/1416, admeasuring 13.11 meters from south to north and 10.67 meters from east to west. The boundaries of the property were also specifically described, namely, Lamjana – Omerga Highway towards the east, the house of one Ranghnath Jawle towards the west, the road leading to Village Lamjana towards the south, and the house of Govind Madhav Shinde towards the north.

5. According to the plaintiff, the property was allotted to him under a rehabilitation scheme for the earthquake-affected persons. He has relied upon an ownership certificate and entries made in the Gram Panchayat record pursuant to the Resolution dated 12.03.2005. He alleged that the defendant, despite having no right in the property, was interfering with his possession and attempting to undertake the construction on the said portion of land.

6. The plaintiff, after the institution of the suit, had applied for amendment at Exhibit – 39 alleging that the defendant had undertaken construction during the pendency of the proceedings. By an order dated 04.03.2015, the application was allowed. Consequently, the plaintiff incorporated Paragraph Nos.3-A, 6-A and Prayer Clause – 1-A, seeking a mandatory injunction for removal of the construction of two rooms and restoration of the plot. Thus, the claim for removal of the two-room construction was already a part of the suit well before the present application came to be preferred by the plaintiff, which is presently under consideration before this Court today.

7. The defendant disputed the plaintiff's title and possession by filing a written statement. The case of the defendant was that he had been in possession of the property since 1997 and had completed construction of the room prior to the institution of the suit. He questioned the description of the property and the documents relied upon by the plaintiff. He further pleaded that the toilet had been constructed under a government scheme and that a subsidy had been received for the said purpose. The rival claims concerning allotment, possession, and construction remained matters for adjudication before the learned Trial Court in the original suit.

8. It is pertinent to note that in the present suit, the evidence has commenced and plaintiff has already been cross-examined. The plaintiff also examined one more witness, namely, Sanjay Kashinath Gir, Gram Vikas Adhikari as PW – 2, and Gunderao Kulkarni, a former Gram Vikas Adhikari, as PW – 3. The

examination-in-chief of PW-3 was recorded on 09.08.2019, whereas his cross-examination was concluded on 31.01.2023. Thereafter, on 29.03.2023, the plaintiff preferred an application for amendment below Exhibit – 120. By the said application, the plaintiff sought substitution of Property No.1416 with Property No.1406 in Paragraph No.1 of the plaint and relevant prayer clauses. The plaintiff also sought to add the name appearing in the western boundary description by explaining that the adjoining property stood in the name of the son of the person originally mentioned. Further, the plaintiff sought insertion of the word "Padun", i.e. demolish, in Paragraph No.3-A and additional averments to the effect that two rooms had been constructed in breach of an injunction and that, after completion of his evidence, the defendant had constructed a toilet in December - 2020. By the said amendment, the plaintiff has sought removal of the toilet and consequential construction.

9. The plaintiff has explained in the said application that he had relied upon the extract supplied to him by the Gram Panchayat and had proceeded on the assumption that it correctly reproduced the original record. According to him, the discrepancy became apparent during the evidence of PW – 2 and PW – 3. He further relied upon his employment in the districts of Bhandara and Nagpur to explain the delay in filing the amendment application before the Court belatedly. He submits that the distance of his village and his service in the Health Department during the COVID-19 pandemic were the reasons why the plaintiff could not file the amendment application within a reasonable time. He maintained that the proposed amendment would facilitate the

determination of the real controversy between the parties, would not change the nature of the suit, and would not cause any prejudice to the defendant.

10. The defendant opposed the said amendment application by filing a detailed reply on record. The main objection of the defendant is that the trial has substantially progressed and that the plaintiff has failed to make out a satisfactory case of due diligence in the amendment application. He contended that the amendment was sought to overcome difficulties arising from the evidence on record and to alter description of the property after the plaintiff and his witnesses had already been cross-examined. He also disputed the proposed pleadings concerning the toilet.

11. The learned Trial Court, after hearing both the sides and upon perusing the amendment application and the reply filed by the defendant, allowed the application principally on the ground that the plaintiff acquired knowledge of Property No.1406 through the evidence of PW – 3. The learned Trial Court further observed that the amendment was necessary for determining the real controversy between the parties and that disallowing the application would result in multiplicity of proceedings. According to the learned Trial Court, the proposed amendment would neither alter the nature of the suit nor affect or withdraw any admissions that had emerged during the evidence of the witnesses.

12. While discussing the governing principles, the learned Trial Court proceeded on the footing that Order VI Rule 17 of the Code of Civil Procedure [for short 'CPC'] is directory rather than

mandatory. The learned Trial Court further proceeded to allow the application even after the recording of evidence, solely on the ground that the opening words of Order VI Rule 17 of CPC provide that an amendment may be allowed "at any stage of the proceedings".

13. Order VI Rule 17 confers a general power upon the Court to permit amendments necessary for determining the real questions in controversy between the parties. Once the trial has commenced, however, such power is subject to the additional statutory requirement that, despite due diligence, the party seeking amendment could not have raised the matter before the commencement of the trial. The necessity of the amendment and the absence of prejudice are relevant considerations; however, they do not dispense with the requirement stipulated in the proviso.

14. In **Vidyabai and Others v. Padmalatha and Another; (2009) 2 SCC 409**, the Supreme Court explained that the proviso is mandatory and that satisfaction of the conditions contained therein is essential for the exercise of jurisdiction to allow an amendment after commencement of the trial. The necessary of deciding the real dispute must, therefore, be considered within the restrictions imposed by the proviso itself to Order VI Rule 17 of CPC. This principle was again reiterated by the Supreme Court in **P. A. Jayalakshmi Vs. H. Saradha; 2009 INSC 934**, wherein the Court emphasised that a liberal approach towards amendments cannot override the statutory limitations..

15. The general principles favouring amendment for the effective adjudication of disputes can be gathered from the catena of Judgments rendered by the Hon'ble Supreme Court. In light of the principles laid down by the Hon'ble Apex Court, it is not in dispute that the trial had already commenced in the present case. The question is whether the explanation offered by the plaintiff, when examined against the actual chronology of the evidence, justified the proposed amendment. On this aspect, the impugned order overlooks material portions of the record. PW – 2, in his examination-in-chief recorded on 21.03.2018, referred to a discrepancy between the serial number appearing in the extract and that recorded in the original register. The said evidence, appearing at page - 44 of the paper book, makes it clear that the plaintiff was aware of the discrepancy in the house property number as early as 21.03.2018. The distinction between an assessment serial number and a property number must be maintained. This evidence cannot, by itself, be treated as an unequivocal statement that Property No. 1416 should be replaced by Property No. 1406. Nevertheless, it disclosed a discrepancy in the foundational record that called for verification.

16. More significantly, PW-3 expressly addressed the precise correction now sought in his examination-in-chief dated 09.08.2019, which appears at pages - 50 and 51 of the paper book. He stated that the property was recorded as C8/16, Property No.1406, with House Serial No.1407. Upon being shown the extract at Exhibit 57, he specifically stated that, apart from the property number being recorded as 1416, the remaining contents corresponded with the record and that his record mentioned

Property No.1406 instead of Property No.1416. Thus, the precise discrepancy forming the basis of Exhibit - 120 had been expressly brought before the Court through the testimony of the plaintiff's own witness in August 2019.

17. The conclusion that has been drawn by the learned Trial Court in the impugned order cannot be sustained merely by referring to the completion of PW – 3's evidence on 31.01.2023. The completion of cross-examination in January – 2023 did not render the discrepancy a newly discovered fact as of that date. The relevant disclosure has already been made in examination-in-chief more than three years earlier. It was, therefore, incumbent upon the learned Trial Court to examine that chronology and the explanation offered by the plaintiff for his failure to act upon the same. While the plaintiff's initial reliance upon an extract supplied by a public authority may explain how an incorrect property number came to be entered in the plaint, it does not explain the continued failure to seek correction even after the precise discrepancy had been disclosed through the testimony of the plaintiff's own witness. The application does not identify any verification undertaken before the commencement of the trial, any impediment to examining the underlying record, or any steps taken after the evidence was recorded in August 2019. The assertion that due care was exercised is merely a conclusion unsupported by particulars demonstrating such care.

18. The plaintiff's employment outside the district and his service during the COVID-19 pandemic deserves to be considered. Those circumstances cannot be rejected merely because they are personal

to the plaintiff. However, the application does not furnish any particulars explaining how these circumstances prevented the plaintiff from instructing the advocate conducting the suit or from filing an application after discovering the discrepancy. The disclosure made by the witnesses was in the year 2019, much prior to the outbreak of the COVID-19 pandemic. The amendment application came to be filed only in March 2023. Even after giving due allowance to the disruption caused by the pandemic, the explanation offered by the plaintiff does not satisfactorily account for the failure to take appropriate steps during the intervening period.

19. The submissions of the plaintiff regarding the proposed alteration of the western boundary also require independent examination. The plaintiff's explanation is that the adjoining house was occupied by the person originally named, along with his son, but that an extract subsequently obtained disclosed the name of the son alone. Such a correction does not necessarily establish that an entirely different parcel of property is being substituted. The defendant's objection, therefore, cannot be accepted merely on the assumption that every alteration in the name of a boundary holder changes the identity of the suit property. Nevertheless, the application does not disclose when the said extract was obtained, what prevented its earlier verification, or why the issue could not have been raised before commencement of the trial despite the exercise of due diligence. The learned Trial Court did not provide any separate reasoning on this issue, which was raised in the amendment application. The proposed averments concerning the construction of a toilet present a further difficulty. By the

amendment application, the plaintiff seeks to plead that the toilet was constructed in December 2020. However, the amended written statement dated 01.03.2018 already refers to the construction of a toilet and the receipt of a Government subsidy in that regard. Further, during the cross-examination of PW-2 on 16.01.2019, records pertaining to the toilet beneficiary scheme were produced, and the witness deposed regarding the inspection of the completed toilet and the disbursement of subsidy. In his re-examination, he clarified that the title of the site had not been verified while extending the benefit of the scheme. Thus, the existence of the toilet and the corresponding official records had already become subjects of evidence in January 2019. At this stage, it is not necessary to determine whether such evidence conclusively disproves the proposed date of construction. Any such determination would involve an adjudication on the merits, which is impermissible while considering an application for amendment. What is material, however, is that the plaintiff has not explained whether the proposed pleading pertains to the same toilet, a reconstruction thereof, or an altogether distinct structure subsequently erected. Nor did the plaintiff explain why an amendment concerning the toilet was not sought when its existence and the subsidy records were expressly brought on record through the testimony of his own witness, PW-2. The proposed pleading cannot be accepted as relating to a subsequent development without examining these circumstances.

20. A genuinely subsequent event cannot be pleaded before it occurs. Accordingly, an amendment concerning such an event ought not to be refused merely because the trial had already commenced

when the event occurred. However, the Court must still examine the nature of the alleged event, the time of its occurrence, and when it came to the plaintiff's knowledge. The explanation for seeking the amendment and its effect on the existing controversy must also be considered. Here, the learned Trial Court allowed the amendment concerning the toilet without addressing the earlier proceedings, pleadings, and evidence relating to the same subject matter. The reasoning pertaining to the discovery of the property number could not have answered this separate objection. The application also proceeds on the premise that an alleged act committed during the pendency of the suit is, by itself, immune from the law of limitation. Such a proposition cannot be accepted in such general terms. The mere pendency of proceedings does not automatically exempt every additional claim from the operation of the law of limitation. Equally, making an amendment effective from the date of its incorporation does not answer the independent requirement of due diligence under the proviso to Order VI Rule 17 of CPC. Since Exhibit 120 fails on the grounds discussed herein-above, it is unnecessary to finally determine the issue of limitation concerning the proposed additional relief.

21. One more aspect that requires consideration in the present proceedings pertains to the insertion of the word "Padun", i.e., demolition. For this purpose, the plaint is required to be read as a whole. Upon perusal of the plaint, it is evident that Paragraph No. 3-A, incorporated pursuant to the order dated 04.03.2015, already contains an allegation that the construction of two rooms is liable to be demolished. Prayer Clause 1-A expressly seeks removal of the said construction and restoration of the plot. The plaintiff's existing

claim for demolition does not depend upon the repetition of the relief already claimed. It cannot, therefore, justify allowing the other substantive additions proposed in Exhibit 120. Similarly, the allegation that two rooms were constructed during the pendency of the suit in breach of an injunction order had already been raised in the earlier amendment application at Exhibit 39. The facts underlying the said allegation were, therefore, within the plaintiff's knowledge long before the commencement of the evidence. No satisfactory explanation has been offered for introducing the proposed formulation at the present stage. Whether an injunction order existed, whether it was duly communicated, and whether any construction was undertaken in violation thereof are matters to be decided on the basis of the permissible pleadings and evidence on record, without treating the proposed allegations as established facts. The defendant has also contended that the proposed amendment seeks to withdraw admissions and to fill up the lacunae disclosed during cross-examination. It is not necessary to hold that every proposed correction amounts to withdrawal of an admission or that the entire identity of the suit property necessarily changes. An amendment does not erase evidence already recorded before the Court. The present application fails because the plaintiff has not established the factual foundation necessary for permitting the substantive amendments sought therein at this stage. The limited insertion concerning demolition is already adequately covered by the existing pleadings and reliefs.

22. In my opinion, therefore, the learned Trial Court was not justified in treating the provisions of Order VI Rule 17 as merely directory and in allowing the application on general considerations

such as avoidance of multiplicity of proceedings and compensation to the defendant by way of costs. The payment of costs cannot cure the absence of the satisfaction required under the proviso. The jurisdiction of this Court under Article 227 of the Constitution of India is supervisory in nature. Interference with an interlocutory order permitting an amendment is not warranted merely because another view is possible.

23. The relevant pleadings, the amendment application, and the depositions are available on record. On perusal of the application below Exhibit 120, the explanation offered by the plaintiff has been considered by me individually. I am satisfied that remanding the matter for reconsideration of the same application, as prayed for by the learned Advocate for the respondent-original plaintiff, would unnecessarily prolong a suit instituted in the year 2015 without serving any useful purpose. In the aforesaid facts and circumstances, and for the detailed reasons recorded herein-above, the application below Exhibit 120 seeking amendment of the plaint deserves to be rejected.

24. In the present case, however, the learned Trial Court's satisfaction regarding the requirement of due diligence rests upon an incomplete reading of the evidence and overlooks the express disclosure made in August 2019. It has also failed to examine separately the materially distinct amendments sought by the plaintiff. These errors pertain to the legal conditions governing the exercise of jurisdiction under Order VI Rule 17 of CPC and, therefore, warrant interference. Accordingly, the writ petition deserves to be allowed. The order dated 12.09.2023 passed below

Exhibit 120 in Regular Civil Suit No. 02 of 2015 is hereby quashed and set aside. Consequently, the application below Exhibit 120 stands rejected.

25. If the amendment has already been carried out solely pursuant to the impugned order, the learned Trial Court shall ensure that the operative plaint is restored to the position obtaining immediately prior to the passing of the said order. The amendment permitted by the order dated 04.03.2015 below Exhibit 39 shall remain unaffected. The evidence already recorded shall continue to remain on record and shall be appreciated in accordance with law.

26. All the observations made herein-above are confined to the issues arising out of the amendment application and have been made solely on the basis of the material available on record for deciding the said application. The learned Trial Court shall not be influenced by any of the observations made herein and shall decide the suit on its own merits, on the basis of the evidence adduced before it and in accordance with law.

27. Having regard to the age of the suit, the learned Trial Court shall endeavour to dispose of the same as expeditiously as possible. The parties shall cooperate in its expeditious disposal. There shall be no order as to costs.

[HITEN S. VENEGAVKAR, J.]

Sameer/Oct-2026