

ORDER BELOW EXH. 27 IN RCS NO. 62/2019
(CNR NO. MHAH250001462019)

This order shall dispose of an application filed by the plaintiffs for amendment of plaint under Order VI Rule 17 of Code of Civil Procedure.

Case of the plaintiffs is as follows:

2. Plaintiffs submit that they have filed a suit for partition, declaration and perpetual injunction. According to plaintiffs, the first amendment they have sought is in regard to mentioning the name of defendant No. 2 after her marriage. Hence, plaintiffs have prayed to amend the name of defendant No. 2 by specifying her name after marriage as mentioned in the present application.

3. Plaintiffs further submit that after procuring the documents in respect of the suit property, they have recently come to know that defendant No. 1 has sold some areas out of the suit property to third persons in order to affect the interest of plaintiffs in the suit property. Hence, plaintiffs have prayed to add the proposed defendant Nos. 3 to 10 as mentioned in the present application. According to plaintiffs, defendant No. 1 sold 80 R area to proposed defendant No. 3 vide sale deed dated 20/8/1996. Defendant No. 1 also sold 80 R area out of the suit property to Mohan Parande and Nana Bachate on 29/8/1996, who then sold the same land to Shrikant Lodha on 27/6/1997. Shrikant Lodha sold such land to Shahnaj Jina, Fayyaj Shaikh, Shashikant Satav, Shivaji Satav and Ganesh Satav on 16/11/2010. Thereafter Shahnaj Jina and others sold lands of 40 R each to proposed defendant No. 5 and proposed defendant No. 6 on 22/11/2013. Thereafter, proposed defendant No. 6 sold 40 R area to proposed defendant No. 4 by sale deed No. 1502/2014 dated 20/3/2014. No consent of plaintiff was sought for the aforesaid transactions. Moreover, there was no relinquishment deed executed by the plaintiff in respect of the suit property. Hence, the aforesaid sale deeds are not binding on the share of the plaintiffs.

4. Perused the record. Heard both the sides. The present suit includes the relief of declaration, partition and perpetual injunction. The provisions for the amendment of pleadings are intended for promoting the ends of justice and not

for defeating them. The following set of propositions emerge about the amendment of pleadings.

(i) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice 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.

(ii) The prayer for amendment is to be allowed:

- if the amendment is required for effective and proper adjudication of the controversy between the parties, and
- to avoid multiplicity of proceedings, provided
- the amendment does not result in injustice to the other side,
- 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
- the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations)¹⁸.

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

- 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,
- the amendment changes the nature of the suit,
- the prayer for amendment is malafide, or
- by the amendment, the other side loses a valid defence.

(iv) 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.

(v) The prescription against allowing an application for amendment, where the amendment results in setting up a time barred claim, is not absolute. In **Pirgonda Hongonda Patil v. Kalgonda Shingonda Patil AIR 1957 SC 363** and **Muni Lal v. Oriental Fire & General Insurance Co. Ltd. AIR 1996 SC 642**, it was held that, as the proposed amendment set up a case which, since

institution of the suit, had become time barred, it would cause prejudice to rights which vested in the other side, the amendment should not be allowed. **At the same time, in L.J. Leach & Co. Ltd. v. Jardine Skinner & Co. AIR 1957 SC 357**, the Hon'ble Supreme Court held that the fact that the claim which was sought to be introduced by the amendment was time barred was not an absolute bar and that a time barred claim could also be sought to be introduced by amendment if the court felt it necessary to do so, *ex debito justitiae*.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment was required to 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) An amendment which results in substitution of one distinct cause of action for another, or in changing the subject matter of the suit, cannot be allowed;

5. The principles governing applications seeking amendment of pleadings, moved under Order VI Rule 17 CPC, are, therefore, well-settled. By judicial fiat, however, these principles have been subjected to exceptions where allowing the amendment would result in irreparable injustice to the opposite party, or where, by the amendment, the party seeking amendment withdraws or resiles from an admission or pleading made by him during the proceedings, thereby resulting in injustice to the opposite party. A time barred claim, too, ordinarily, cannot be sought to be introduced by an amendment in a plaint; this principle, however, is not absolute and, in certain circumstances, a court may permit introduction of a time barred claim by amendment *ex debito justitiae*. A golden thread that runs through all these principles is that, 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. Delay in applying for amendment, or possibility of the proceedings getting protracted were the prayer for amendment to be allowed, are not, therefore, statutorily envisaged as grounds on which a prayer for amendment of pleadings may legitimately be denied. On the proposition that delay in applying for amendment cannot be a sole ground to reject the prayer, the judgment of the Hon'ble Supreme Court in **Andhra Bank v. ABN Amro Bank N.V. (2007) 6 SCC 167** is a clear authority.

6. In view of the aforesaid position, regarding amendment of pleadings, the present application can be allowed. Even if it is considered that there is delay in applying for an amendment, it cannot be considered as a ground for denying the amendment of pleading. Moreover, a time barred claim, ordinarily, cannot be sought to be introduced by an amendment in a plaint. However, it is not absolute and in certain circumstances a court may permit introduction of a time barred claim by amendment ex debito justitiae. In the present case, the trial is yet to commence. It is not the amendment which completely changes the nature of the suit. If the amendment is allowed, it would mean to add the reliefs of declaration regarding the sale deeds to the already existing reliefs of declaration, partition and injunction. It is not the case that reliefs existing in the present suit are replaced by the proposed amendment. As mentioned earlier, where the amendment is sought before the commencement of trial, the court is required to be liberal in its approach. Most importantly, the main object of the amendment is to avoid the multiplicity of proceedings. Disallowing this application might lead to multiplicity of litigations between the plaintiff and the

proposed defendants. Hence, it would be appropriate to allow the present application subject to imposition of costs.

ORDER

- a. Application is allowed subject to the costs of Rs.4000/- to be deposited in the Court.
- b. Plaintiff shall carry out amendment within the stipulated period.
- c. No order as to costs.

Date:- 11/10/2023.

Place:- Parner.

(N.S.Sabnis)
2nd Jt.Civil Judge, J.D.,
Parner.