

Order below Exh. 26 in R.C.S. No. 204/2021
(CNR No. : MHAH250007382021)

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

Case of the plaintiffs is as follows:

2. It is submitted by plaintiffs that suit is filed for declaration and injunction wherein defendants are temporarily restrained by the order dated 06/05/2022 from alienating or creating third party interest in the suit property till final disposal of the suit. However, defendant No.1 has sold his share in suit property as mentioned in plaint to Vikas Kisan Sawant on 24/06/2014 by registered sale deed. On perusal of sale deed, it appears that the defendant No.1 has executed sale deed by mentioning 0 H 92 R instead of mentioning 0 H 73 R + 0.20 R Kharaba, which is inconsistent with partition deed. The deed is technically incorrect and hence, plaintiff has right to seek relief in that regard. During pendency of the suit, despite having knowledge of suit and existence of the injunction order, defendant No.1 has sold the complete suit property to third party on 21/09/2023. Plaintiffs seek to add proposed defendant Nos.4 to 8 as they are purchasers of the suit property. Plaintiffs have prayed to add the contents in para 3 of the plaint regarding the area which is mentioned in partition deed admeasuring 0 H 83 R + 20 R Potkharaba and the area which is shown merely as admeasuring 0 H 92 R in the sale deed. Plaintiff further seeks to add new paragraph relating to the sale deed made in favour of proposed defendant Nos. 4 to 7 by registered sale deed No.6672/2023 as mentioned in the application. Further, plaintiffs

also seek to add the relief relating to the sale deed No.3170/2014 made in favour of defendant No.8 in relief clause No.7B. Moreover, plaintiffs have also prayed to add the relief for adding declaration regarding sale deed No.6672/2023 in relief clause No.7B(1) and prayer of perpetual injunction in relief clause No.7B (2) as mentioned in the application. According to plaintiffs, if the amendment is not allowed to be carried, they will suffer irreparable loss. When plaintiffs' counsel had a look at the partition deed and sale deed, they came to know about the technical mistakes and plaintiffs were satisfied that the said mistake would be fatal to the adjudication of suit. Hence, there was delay in seeking amendment on the part of plaintiffs. Hence, plaintiffs have prayed to allow the present application.

3. Say of defendants was called for. Defendant Nos.1 and 2 submitted that, reasons in application are not proper. The application is filed out of limitation. Hence, prayed to reject the application. In case the application is to be allowed, defendants prayed to impose heavy costs to plaintiffs.

4. Heard learned advocate for the plaintiffs and defendant Nos.1 and 2. Suit is proceeded without W.S. of defendant No.3. The present suit includes the relief of declaration 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 the court may permit introduction of a time barred claim by amendment *ex debito justitiae*. In the present case, suit had proceeded *ex parte* earlier and it was earlier pending for final

arguments. However, plaintiffs sought amendment by filing the present application to add the aforesaid proposed defendants, averments and the reliefs. Record shows that defendant Nos.1 and 2 appeared on the basis of notice issued to them in pursuance of present application. The suit was actually proceeded ex parte against them. Now that defendant Nos.1 and 2 have appeared in the suit and are yet to file W.S., therefore considering such position, 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 deed made in favour of proposed defendant Nos.4 to 7 and relief of perpetual injunction against proposed defendant Nos.4 to 8 to the already existing reliefs of declaration and injunction. It is not the case that reliefs existing in the present suit are replaced by the proposed amendment. Moreover, according to plaintiffs, the sale deed has been made in favour of proposed defendant Nos.4 to 7 during the pendency of the suit. It is important to consider that, 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.800/- to be paid to defendant Nos.1 and 2.
- b. Plaintiff shall carry out amendment within the stipulated period.

Date : 01/12/2023
Place : Parner.

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