

Order passed below Exh. 26
in R.C.S. No. 115/2020
Babasaheb vs Varsha

Plaintiffs have filed this application under Order VI Rule 17 of the Code of Civil Procedure for amendment of plaint.

2. Plaintiffs have instituted suit for permanent injunction against the defendant in respect of suit property. The defendant has already filed written statement to resist the claim of plaintiffs. By way of this application for amendment, plaintiffs want to add contents relating to sale deed in respect suit property in para no.3 of plaint. The plaintiffs contented that father of plaintiff no.1 namely Manik Kale is owner and possessor of suit property. He had executed sale deed in favour of Govind Munde only for his economic need. After that, on 23/06/2000, sale deed of same suit property has executed in favour husband of defendant namely Vishnu Kale. The suit property was not self-acquired property of Vishnu kale. Suit property is joint family property. Vishnu Kale and plaintiff no.1 have half share in suit property. Above said sale deed has executed in favour of Vishnu kale with consent of plaintiff no.1 and another brother Ashruba. Therefore, plaintiff no.1 has no objection in respect of sale deed of suit property.

3. Further plaintiffs want to add as para no.3(A) that Manik kale have three sons. He has ancestral agriculture land in Block no.446,436,450 in Tokawadi. There was also partition between plaintiff no.1 and his brothers in respect of above said agriculture land. Considering the suit property, plaintiff no.1 and husband of defendant have half share in suit property. Therefore, plaintiff wants to mention additional relief of declaration that sale deed of suit property in favour of husband of defendant is not binding on them and plaintiff no.1 has half share in suit property. Before this application, plaintiff has already

mentioned in plaint in respect of his half share in suit property. By way of proposed amendment, plaintiff want to add explanation in respect of his half share in suit property. Plaintiff also want to amend prayer clause in plaint as like plaintiffs prayed that may kindly declared the owner of suit property. Hence plaintiff prayed that may kindly allow the application.

4. In order to resist the application of plaintiff, defendant has filed her say and written argument below exh.28 and 31. Defendant has strongly objected to the application of plaintiff. Defendant denied the all contents of the application. Further defendant submitted that, there is no proper reason as well as change the circumstances for the amendment in plaint. Suit property is self-acquired property of husband of defendant. Plaintiffs have no concern in respect of suit property. Defendant is owner and possessor of suit property on the basis of sale deed. Plaintiffs have no objection in respect sale deed of suit property. Plaintiff no.1 has no half share in suit property. The plaintiffs have already filed false and bogus suit in respect of suit property. Considering the proposed amendment, nature of suit will change. If proposed amendment will be allowed then the nature of suit will totally change. The plaintiff filed a suit for only permanent injunction. Defendant has possessed the suit property till today. Therefore, proposed amendment is not necessary for the purpose of determining the real controversy between the parties. Therefore, proposed amendment is not just and proper before the eyes of law.Hence prayed that application may be rejected with heavy costs.

5. Perused the application and say filed. Perused the pleadings. Heard both the Ld. Advocates for respective parties. Following points arises for my determination and findings to which with reasons are discussed as under.

Sr. No.	POINTS	FINDINGS
1.	Whether proposed amendment is just and necessary to for the purpose of determining the real question in controversy between the parties?	Yes
2.	Whether proposed amendment will change the nature of suit?	No
3.	What order?	Application is allowed subject to costs

Reasons

6. Point no.1 and 2 are interlinked with each other. Therefore I am discussing both points together.

7. Heard the both sides, perused the written arguments of parties, it appears that by way of proposed amendment, plaintiff intends to explain about previous transactions of suit property. Plaintiff has already mentioned in plaint in respect of his half share in suit property. Basically, suit is filed for the permanent injunction against the defendant in respect of suit property. But at the same time, defendant has taken defence in respect of title of suit property in view of sale deed in written statement. In short, proposed amendment is relating to previous transactions of suit property. Plaintiff submitted that suit property is ancestral property. Plaintiff no.1 has half share in suit property. Considering the pleading of both parties, It appears that there is cloud over title of suit property. Sale deed executed in favour of husband of defendant only nominal purpose. But plaintiff no.1 and

husband of defendant have half share in suit property. In order to claim of suit, plaintiffs must be prove their possession and ownership of suit property.

8. I have carefully gone through the every para of proposed amendment. In the present suit, plaintiff claimed the permanent injunction against the defendants and defendant set up defence that her husband is owner of suit property on the basis sale deed. There is real question in controversy between the ownership and possession of suit property. Considering the controversy between parties, it is just and necessary to decide the title of suit property in order to avoid multiplicity of proceedings. Both parties have required opportunity to prove their claim and defence. It is just and necessary to determine the said controversy in respect of suit property in suit.

9. I have also gone through the provisions of amendment of pleadings, It is discretion of court to allow the pleading either party to alter or amend his pleading at any stage of the proceedings. It is clear that while deciding the amendment application, the court shall not go into the merit of the case. Court see only whether such amendment is necessary for the purpose of real question in controversy between the parties. I have also perused the case laws in **Rajesh Kumar Agarwal and Ors. v/s K. K. Modi and ors (civil appeal no. 5350-5351 of 2002)** produced by the plaintiff in support of his application. But considering the fact and circumstances, this case law is not applicable here.

10. Considering the issue before me, I have also perused the guidelines laid down in **Life Insurance corporation Ltd. Vs. Sajeiv Builders Private Ltd. And Ors. Civ.App. no. 5909 of 2022**. In this case Hon'ble Supreme court came to the conclusion that the prayer of amendment is to be allowed in following circumstances-

1. If the amendment is required for the effective and proper adjudication of the controversy between the parties.
2. To avoid multiplicity of proceeding.
3. The amendment does not reason in injustice to the other side.
4. By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the parties which confers right of other side.
5. The amendment does not raise a time barred claim resulting in divesting other side.
6. By the amendment, unless change the nature of suit, a malafide and losses a valid defense.
7. In dealing with the amendment of pleading. The court should not have hyper technical approach and is ordinarily required to be liberal specially. Where the opposite party can compensated with costs.
8. Where the amendment could enable the court to pin pointed consider the dispute and would aid in rendering a more satisfactory decision.
9. Where the amendment merely sought to introduce and additional or new approach without a introducing a time bard cause of action. The amendment is liable to be allowed even after expiry of limitation.
11. Amendment may be justifiably allowed. Where it is intend to rectify in absence of material particulars in the plaint.

11. In another case law, **Balkrishna Ganpat Elwande vs Shankar Tukaram Sable And Ors. 2006 (6) Mh.L.j 224** *Hon. Bombay High court observed that The plaintiff, by the proposed amendment, wanted to bring this subsequent event on record and as a consequence of those subsequent events, desired to seek possession of the suit property from the defendants. The proposed amendment did not change the nature of the suit. In fact, by allowing the amendment application, multiplicity of proceedings could*

have been avoided. The trial Court should follow the principle which it ought to have followed while considering the application for grant of amendment. It has been laid down in the decision reported in 2002 S.A.R. Civil 854 that it was permissible to convert a suit for permanent prohibitory injunction into a suit for declaration of title and recovery of possession. In similar set of facts, the Supreme Court observed that the basic structure of the suit is not altered by the proposed amendment. It was then laid down by the Supreme Court that in order to avoid multiplicity of suits, it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit.

12. Considering the ratio of above case law and guidelines, In the present application, plaintiffs want to insert previous transaction in respect of suit property in para no.3, 3(A). Plaintiff has also want to add relief of declaration in respect of tittle of suit propertyin prayer clause in order to amended contents. The claim of plaintiff is totally depend on amendment. Therefore, if the proposed amendment is allowed no change will occur in the nature of suit. On the contrary, defendant will also opportunity to contest the suit in view of title of suit property. Considering the stage of suit, no prejudice will cause to the plaintiff. On point of limitation, it will be considered at the time of deciding the suit on merits. But at this stage, opportunity should be given to plaintiff in order to specifically pleaded their claim and contest the suit on merits. In view of amendment, the defendant has also opportunity to contest the suit effectively.

13. In view of above discussion, Court has come to the conclusion that court may at any stage of the proceeding, allow either party to alter or amend his pleading in such a manner that such a amendment may be necessary for the purpose of determining the real questions in controversy between the parties. In the present application, it is just and necessary to give the opportunity to the

plaintiff to in order to his claim. If amendment will allowed, it would not hardship to the defendant and prejudiced the rights of defendant. Defendant has also opportunity to rebut the claim of plaintiff at the time of hearing of the suit. There is no change in the nature of suit. Therefore, I answered as to point no.1 is affirmative and point no.2 is negative.

Point no.3

14. In light of above discussion and findings of point no.1 and 2, the application deserves to be allowed. Considering the period wasted in deciding the application, plaintiff should liable to compensate to the defendant in term of costs. The matter is already more than three years old. There is delay in deciding the suit on merits because of this amendment. There is also settle principal of law that court should take liberal approach by allowing the amendment application on the basis terms of costs. Hence it would be just and proper to allow the application Accordingly, I pass following order

ORDER

- 1) Application (exh. 26) is allowed subject to costs.
- 2) Plaintiff is directed that to amend the plaint as prayed within 14 days or next date and to file amended copy of plaint on or before next date and to provide the amended copy of a plaint to the defendant.
- 3) Defendant is at liberty to file additional written statement to the claim of plaintiff.
- 4) Plaintiff is directed to pay the costs of Rs. 2000/- to the defendant.
- 5) Plaintiff is directed to deposit the court fee according their

claim and addition of prayer.

- 6) Order self typed and pronounced in open court.

Sd/-

(D.V.Gaikwad)

Civil Judge (Junior Division),

Parli V.

Date :- 09/01/ 2023.