

MHKO100002012011

**REGULAR CIVIL SUIT NO. 39/2011**

Saraswati Shivsing Hazare &amp; ors.

//Vs//

Subhash Harising Shiledar.

**ORDER ON EXHIBIT NO.79**

This is an application filed by plaintiffs under Order VI Rule 17 of the Code of Civil Procedure (hereinafter referred as 'the CPC') for amendment of plaint. Perused application and say filed by defendants below Exh.85. Heard both sides.

02. It is submitted for plaintiffs that, the present suit is filed for partition and perpetual injunction. While suit was pending plaintiffs came to know about mutation entry no.4264 in respect of lands bearing Gat Nos. 103, 285, 293, 391 and 394 out of suit properties. Thereafter, plaintiff collected informations of documents in that regard and filed his objections to the same. Actually, Shardabai Sahadevsingh Shiledar died on 31/01/2011 and after her death on information of defendant his name was entered as her heir. When that was the situation defendant by creating bogus will deed dated 11/02/2010 and got it entered vide mutation entry no.4264. Deceased Sharabai @ Shardabai Sahadevsingh Shiledar never made any will deed in her lifetime. Above mentioned properties were not owned by her alone, but to create complications and grab the land, defendant created said false and bogus document. Plaintiffs received notice in respect of mutation entry no.4264 on 31/12/2019 and thus, cause of action arose at that time to amend the plaint. Thus, in order to decide the suit, plaintiffs needs to plead facts in that regard and prayer seeking declarations that said will deed is false and bogus. Therefore, prayed for allowing the application.

03. On the contrary it is submitted for defendant that, the application is not legal and tenable. Further, the suit was filed in the year 2011 and present application is filed after delay of 10 years on false reasons. Actually, defendant filed written statements at Exh.12 on 23/06/2011 and at page no.11 of it, defendant specifically mentioned about those facts. Further, issues in that regard is also framed and burden is casted upon the defendant. Still, plaintiffs making false statements about recently getting information about mutation entry no.4264. Thus, amendment sought by plaintiff is illegal and to prolong the suit. Therefore, prayed for rejection of application.

04. Heard learned advocates for both the parties. Gone through application and say. Considering the rival submissions of the parties following points arise for my determination. Findings thereon are recorded for the reasons discussed herein under;

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether plaintiffs are entitled to carry out proposed amendment in their plaint ?	No.
2.	What order ?	Application is rejected.

### REASONS

#### AS TO POINT NO.1 :-

05. Perused application and say. Plaintiffs through this application intending to sought amendment in plaint in respect of will deed dated 11/02/2010 made by deceased Sharabai @ Shardabai Sahadevsingh Shiledar. On perusal of record it reveals that, present suit is filed for partition and perpetual injunction in the year 2011 and defendant filed written statements on 23/06/2011. Further, defendant

in his written statements at Exh.12 has pleaded about alleged will deed and on that basis issues were framed on 26/09/2014. Issue no.11 is specifically framed in respect of alleged will deed and burden is casted on defendant as to whether he prove it.

06. In present application, plaintiffs stated that they came to know about said document when they received notice in the year 2019 and thus filed present application in the year 2020. Considering above mentioned facts placed on record of pleadings in written statements and framing of issues in respect of alleged will deed, reasons given by plaintiffs to file present application at belated stage that too after 10 years does not seem justifiable.

07. Further, when defendant has pleaded about alleged will deed in his written statements and on that basis issue is also framed, then, proposed pleadings in the plaint in that regard are not just and necessary at this stage.

08. Moreover, by proposed amendment plaintiff seeks to declare the document will deed dated 11/02/2010 to be null and bogus by filling application for amendment in the year 2020. When plaintiff wants to make any amendment in the plaint, that should be subject to law of limitation. As per the Limitation Act, to file suit for declaration the period of limitation is three years. In present case, defendant pleaded about alleged will deed in his written statement in the year 2011. Thus, it can be presumed that plaintiffs had knowledge about the same at the time of filling of written statements in the Court. The written statements at Exh.12 was filed on 23/06/2011, thus, it can be presumed that plaintiffs had knowledge about the same in the year 2011 and period of limitation of three years expired in the year 2014.

Present application is filed in the year 2020, which is not within limitation.

09. As a general rule, the Court should decline amendments, if fresh suit on the amended claims would be barred by limitation on the date of application. Further, the Court can allow amendments which are barred by limitation to secure the ends of justice. It will be dependent on the factual background of the case. If facts and circumstances of the case clearly establish that said amendment is necessary to determine the cause of action and to avoid further litigations, it can be allowed.

10. In present case, as mentioned above already defendant has pleaded in respect of alleged will deed and on that basis issue in respect of alleged will deed is framed. Thus, both parties can lead evidence in that regard and said issue can be decided on merit in this suit itself. Therefore, if proposed amendment is not allowed then there are no possibilities of multiplicities of proceedings.

11. Ld. Advocate for plaintiffs placed reliance on judgments of the Hon'ble Supreme Court and the Bombay High Court as follows,

1. *Abhay Arondekar Vs. Mrs. Helen Prisca Correia and Ors. 2013 CJ (Bom) 1492,*
2. *Ashok Ramkrishna Kalbande and Anr. Vs. Pournima Bhimrao Kewate, 2016 CJ (Bom) 1271,*
3. *Bhimrao Laxman Kamble and Ors. Vs. Annaso Dhondiram Manole, 2018 CJ (Bom) 166,*
4. *N. C. Bansal Vs. Uttar Pradesh Financial Corporation and Anr., 2018 CJ (SC) 31,*

5. *Olga Rodrigues and Others Vs. Christopher Pinto and Others, 2017 CJ (Bom) 2038.*

12. In cases of '*Abhay Arondekar*' and '*Olga Rodrigues*' mentioned supra, the Hon'ble Bombay High Court observed that, while dealing with application for amendment the factors to be considered are whether proposed amendments are necessary for determination of real question in controversy between the parties and whether it changes the nature of the suit. As discussed above, in present suit already facts which are proposed by amendment in plaint are already on record as per written statements of defendants and issue is already framed in that regard. Thus, as per observations given in cases cited, in present suit proposed amendment are not necessary. Therefore, ratio laid down in those above cases are not applicable to present case.

13. Further, in the case of '*Ashok Kalbande*' cited supra, the Hon'ble Bombay High Court observed that, the subsequent event shall not have any bearing on the controversy involved in the suit on merit and amendment cannot be denied on that ground. In present case, by proposed amendment plaintiff sought to declare will deed dated 11/02/2010 be null and void, wherein suit is filed in the year 2011. Thus, the controversy involved in present suit is not subsequent event. Thus, facts of present case are different from cited case, hence not applicable to present facts.

14. In the case of '*N. C. Bansal*' mentioned supra, the Hon'ble Supreme Court observed that, when suit is at initial stage and proposed amendment does not change the nature of suit, such amendment shall be allowed. In present case, suit was filed in the year 2011 and after appearance of defendant and filling of written

statements, issues were framed in the year 2014. Thereafter, evidence affidavit of plaintiff was filed in the year 2016 and since then it is pending for cross-examination of plaintiff. Present application for amendment is filed in the year 2020 and that too after starting of hearing of the case. Thus, if amendment in plaint as sought is permitted, then it will cause serious prejudice to defendant as it is not filed with due diligence. So also, in such peculiar circumstances it cannot be said that, the suit is at initial stage and amendment can be allowed. Therefore, observations of the case cited does not applies to the facts of present case.

15. In the case of '*Bhimrao Kamble*' cited supra, the Hon'ble Bombay High Court observed that, even if the amendment is sought at a belated stage, the point of limitation, as per settled position of law, is required to be kept open to be decided at the time of hearing of the suit, especially having regard to the fact that the suit is already fixed for hearing. Hence, it would be in the interest of both parties that this issue be decided at the time of trial, in order to resolve the controversy between the parties. In present case, issue involved is also of limitation. As a general rule, issue as to limitation can be framed when there is mixed question of law and facts and to decide it adducing evidence by parties is required. However, in present case as discussed above, from bare perusal of pleadings of parties the issue of limitation can be decided. Further, even after specifically mentioning the fact of will deed of year 2010 in written statements which is filed in the year 2011, plaintiff failed to take steps in that regard till year 2020. Moreover, there is no specific explanation of such huge delay caused by plaintiff. Therefore, facts of the cited case are different from the present case and thus, not applicable to it.

16. On the other hand, Ld. Advocate for defendant placed reliance on judgments of the Hon'ble Bombay High Court as follows,

1. *Prakash Ratanlal @ Ratansa Kasari Vs. Bhika Banda Dhage and anr. 2010 (Supp.) Bom.C.R. 131,*
2. *Abdul Gafoor Abdul Rehman Vs. Deputy Executive Engineer and anr. 2010 (Supp.) Bom.C.R. 128,*
3. *Rajendra Ramchhoddas Badshah Vs. Depak Ishwardas and ors. 2009 (Supp.) Bom.C.R. 412,*
4. *Vishnu Pandurang Pawar Vs. Dropadabai Subhash Pawar and ors. 2010 (Supp.) Bom.C.R. 212,*
5. *Alkapuri Co-operative Housing Society Ltd. Vs. Jayantibhai Naginbhai thr. LRs, 2009 (Supp.) Bom.C.R. 42.*

17. In cases of *Prakash Kasari, Abdul Gafoor, Rajendra Badshah* and *Vishnu Pawar* cited supra, the Hon'ble Bombay High Court observed that, the stage of the suit is important and as per Order VI, Rule 17, plaintiff has to give satisfactory reasons for such delay in making the application for amendment. Further, the proposed amendment shall not be of such nature which will change the nature of the suit. In present case, the observations of above cited cases in respect of stage, delay and reason is applicable. In this case, the application is filed at belated stage, after delay of 10 years and no satisfactory reasons assigned by the plaintiff.

18. In the case of *Alkapuri Co-operative Housing Society* cited supra, the Hon'ble Bombay High Court observed that, there cannot be any doubt or dispute that an application for amendment of the plaint seeking to introduce a cause of action which had arisen during the pendency of the suit stands on a different footing than the one which

had arisen prior to the date of institution of the suit. In present case, though plaintiff contended about cause of action arose after getting notice in the year 2019. But, as per pleading in the written statements and date of will deed dated 11/02/2010, the cause of action for proposed amendment is nothing but of prior to institution of suit. Thus, such amendment stands on different footing as observed above and general rule of amendment of liberal view is not applicable to it.

19. Considering all above discussion and observations of cited cases, the proposed amendment is not necessary to decide the dispute on merit at this stage and it is also not within limitation. So also, plaintiffs not assigned proper and satisfactory reasons for such delay. Further, when pleadings in respect of proposed amendment is already on record and issue is also framed on that aspect, plaintiffs can lead evidence on it and thus, it will not cause serious injustice or irreparable loss to plaintiffs. From the above discussion, I do not find necessity of proposed amendment at this stage and thus, plaintiffs are not entitled to carry out proposed amendment in their plaint. Accordingly, I answered point no.1 in the negative.

**AS TO POINT NO. 2 :-**

20. As I have already answered point no. 1 in the negative, I am not inclined to allow this application. Hence, I proceed to pass following order;

**:- ORDER :-**

Application is rejected

Gadhinglaj.  
Date:-03/10/2022.

( **Sujit A. Rathod** )  
2<sup>nd</sup> Jt. Civil Judge, Junior Division,  
Gadhinglaj.

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of stenographer	R. D. Patil.
Name of Court	S. A. Rathod, 2 <sup>nd</sup> Jt. Civil Judge Jr. Dvn. and Judicial Magistrate First Class, Gadhinglaj.
Date of Dictation	03/10/2022
Order signed by P.O. on	03/10/2022
Order uploaded on	06/10/2022