

Regular Civil Suit No.125/2012

Shri. Rahul Surendra Kamat

Vs.

Shri. Surendra Meghram Parmar & Ors.

ORDER BELOW EXHIBIT 137

This application is filed by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure.

02. The plaintiff has submitted that, defendant No.1 has filed certified copy of judgment passed in R.C.S. No.74/2007 on record. The said suit was in between defendant No.1 & defendant Nos.3 to 8. The plaintiff was not party to the said suit. There is no pleading of any defendants in their respective written statement about R.C.S. No.74/2007. The plaintiff first time came to know about the said suit when defendant has filed copy of judgment on record. Therefore, the plaintiff may be permitted to amend his plaint and to add the pleading in respect of judgment in R.C.S. No.74/2007. The said amendment is not going to change the nature of the suit. No prejudice will be cause to the defendants. The plaintiff has submitted that, the application be allowed.

03. Defendants have filed their say to the application at Exh.142. Defendants have submitted that, contents of the application are not true and correct. Defendants have filed the written statement in the year

2013 and in the written statement at para No.9, there is specific contention in respect of R.C.S. No.74/2007. By permission to amend the suit, the plaintiff wants to sought the declaration in respect of judgment and decree passed in R.C.S. No.74/2007. The plaintiff has come to know about the said suit when defendant has filed his written statement. The plaintiff is seeking amendment and claiming the relief which is beyond prescribed limitation as per Limitation Act. This application is not at all tenable. Hence, the application be rejected.

04. Heard the learned advocate for the plaintiff as well as defendants at length.

05. The learned advocate for the plaintiff has submitted that, amendment can be allowed at any stage. There is no bar to amend the suit at any stage. The plaintiff has not a party to the suit in R.C.S. No.74/2007 so he was not aware about the same. The issue in respect of limitation can be decided after taking evidence of both parties. If an amendment application is allowed, then there will be no harm to the defendants. They have liberty to file their say and lead the evidence. The learned advocate for the plaintiff has relied on case laws of the Hon'ble Bombay High Court which are as follows:-

i) *Adarsh Water Parks & Resorts Pvt. Ltd. Vs. Abdul Rashid Abdul Rehman Yusuf & Ors. 2021(5) ALL MR 172*

In this matter, the Hon'ble Bombay High Court has held that, "the lawfulness or otherwise of the compromise can be tested only by the parties to the compromise before the same court, which passed the compromise decree under the proviso to Rule 3 of Order 23. If its lawful or rather, its effect on the rights of third parties has to be tested with reference to the rights of third parties, who are not parties to the compromise decree, that exercise can be accomplished only in a suit, which puts in issue those rights asserted by the third parties".

ii) ***Chandrakant Rambhau Khachane & Ors. Nandlal Govardhandas Chandak 2018(3) ALL MR 374***

In this matter, the Hon'ble Bombay High Court has held that, "Order 6 Rule 17 – Amendment of plaint, Application for, at appellate stage Seeking declaration that sale deed on basis of which defendant interfering with peaceful possession of plaintiff was nominal, sham and bogus Relief of perpetual injunction originally claimed in suit was also based on alleged invalid sale transaction Amendment does not change nature of suit Amendment is necessary for effective adjudication of case as it brings out real matter in controversy Amendment neither causing any prejudice to defendant nor changing nature of suit Amendment allowed".

iii) ***Bhimrao Laxman Kamble (D) thr. his LRs. Vs. Annaso Dhondiram Manole & Anr. 2018(3) ALL MR 740***

In this matter, the Hon'ble Bombay High Court has held that, "Order 6 Rule 17 – Relief sought by proposed amendment could have also been claimed by way of separate suit In such circumstances, proposed amendment is necessary for purposes of determining real question of controversy between parties and it does not change basic nature of suit Even on point of limitation, same is to be kept open to be decided at time of hearing No illegality committed in allowing amendment".

iv) ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr. 2023(2) ALL MR 333 (S.C.)***

In this matter, the Hon'ble Bombay High Court has held that, "Order 6 Rule 17 would apply – Plaintiff who has earlier failed to incorporate reliefs for compensation or who has incorporated reliefs for compensation but seeks amendment in same Could seek permission of court to introduce these reliefs by way of amendment".

06. The learned advocate for defendants has argued that, as per article 59 of Limitation Act, to cancel or set aside a decree, the limitation is of three years from the date of knowledge. Defendant Nos.3 to 7 have filed their written statement at Exh.26. In the said written statement, defendant Nos.3 to 7 have stated about R.C.S. No.74/2007. The said written statement was filed on 08/12/2010. The evidence of parties is already recorded. The cross-

examination of the plaintiff has started. Now the plaintiff is seeking the amendment and adding the relief which is time bar. Hence, the said application be rejected.

07. The learned advocate for defendants has relied on case law of the Hon'ble Supreme Court of India i.e. ***Vidyabai & Ors. Vs. Padmalatha & Anr. Civil Appeal No.7251 of 2008.***

In this matter, the Hon'ble Supreme Court of India held in para No.14 that,

14. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.

08. Perused the matter, application and say. From perusal of the matter, it appears that, the suit is filed by the plaintiff against defendants for declaration and perpetual injunction. The suit is filed by the plaintiff on 19/08/2010. In the present suit, defendant Nos.3 to 7 have appeared and filed their written statement at Exh.26 on 08/12/2010. The copy of said written statement is received by the plaintiff on

04/12/2012. I have gone through the pleading of both the parties. Defendants in their written statement in para No.10 has mentioned that, in respect of the suit filed by defendant No.1 i.e. R.C.S. No.74/2007 against defendant Nos.3 to 8, the said suit was decreed and defendant No.1 was declared to be owner of the property, against the same judgment and order, no appeal has been filed and it remains intact. From perusal of above fact, it is crystal clear that, the plaintiff has came to know about R.C.S. No.74/2007 on 04/12/2012 which is date on which the plaintiff has received the copy of written statement. This amendment application was filed by the plaintiff on 12/01/2023. In meanwhile, plaintiff has amended the plaint in the year 2017 & 2018. At that time, he has not seek any amendment in respect of R.C.S. No.74/2007. After more than 11 years, the plaintiff is seeking amendment in the plaint as well as relief in respect of R.C.S. No.74/2007.

09. As per order 6 rule 17 of C.P.C., *The Court may at any state of the proceedings allow either party to alter or amend his pleadings in such mannter and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties;*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the

commencement of trial.

10. From above facts, it appears that, the plaintiff is not seeking any amendment in respect of subsequent event or in respect of the fact about which he has come to know recently. Purpose of order 6 rule 17 is either party to amend his pleading. But the amendment cannot be claimed as a matter of right. But it is also true that, while deciding the application of the amendment, the Court should have liberal approach. In the present case, from above facts, it prima facie appears that, the plaintiff has got the knowledge in respect of R.C.S. No.74/2007 on 04/12/2012. By proposed amendment, the plaintiff wants to amend the prayer clause and seeking declaration that, the judgment and decree passed in R.C.S. No.74/2007 is not binding on the plaintiff. The plaintiff has also sought amendment in respect of valuation clause of the plaint as per prayer clause. By proposed amendment, the plaintiff wants to seek the declaration that, the said judgment and decree is not binding on him.

11. In the present case, the plaintiff has stated that, when defendants have filed the copy of certified judgment and order on record then he has come to know about the said R.C.S. No.74/2007. The plaintiff has also stated in their application that, no defendants have averred about R.C.S. No.74/2007 in their written statement. But after going through the pleading of the parties, it appears that,

there is a pleading of defendants in respect of R.C.S. No.74/2007 in their written statement. Considering above all facts, the ground for filing the application that, defendants have not averred in their written statement is not acceptable. The said written statement has been filed in the year 2010. The plaintiff has not sufficiently explained why this application has been filed by him at belated stage ?. As per order 6 Rule 17, amendment application filed after commencement of trial shall be allowed if court comes to conclusion that, in spite of due diligence, the party could not have raised the matter before the commencement of trial. In the present matter, issues have been framed by my learned predecessor on 02/04/2016. Thereafter, the plaintiff has lead his evidence by filing evidence affidavit. The cross-examination has been conducted by the learned advocate for defendants of witness. During cross-examination also, the learned advocate for defendants has asked the question to the plaintiff's witness in respect of R.C.S. No.74/2007. The said cross-examination is partly completed on 12/12/2022. Thereafter, the matter is pending for further cross-examination of the plaintiff's witness. In meanwhile, application has been filed by the plaintiff on 17/08/2023. In the present matter, from above facts, it appears that, the trial has been commenced. The plaintiff has filed this application belatedly. The plaintiff was very much having a knowledge of the facts in respect of R.C.S. No.74/2007. But he has not filed application with due diligence.

12. I have gone through case laws filed by the learned advocate for the plaintiff as well as defendants. From the ratio laid down, it is crystal clear that, for deciding the amendment, the Court has to see whether the amendment is necessary for determining real question in controversy if the amendment is not causing any prejudice to defendant not changing nature of suit. In the present matter, plaintiff is seeking the amendment in respect of the facts about which he was having the knowledge since 2012. This application is filed by the plaintiff almost after 11 years from the date of knowledge. The delay for filing this application belatedly is not explained properly. Reasons given for the delay are not acceptable. Previously in this matter, the plaintiff has filed two amendment applications, but did not seek any amendment in respect of the facts about R.C.S. No.74/2007. In the present matter, the plaintiff has not filed the application with due diligence. From the above facts, it also appears that, the plaintiff wants to add a claim which is time barred. In such circumstances and considering the facts of this case and the proviso of Order 6 Rule 17, this amendment application cannot be decided liberally.

13. Considering above all facts, I do not found just grounds to allow the said application which has been filed by the plaintiff after commencement of trial in respect of the fact which was within the knowledge of the plaintiff from the date of filing of written statement of defendant

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Nos.3 to 7 on record. The amended provision i.e. order 6 rule 17 categorically provides that, if the fact was within the knowledge of the party, but he has not seek the amendment in respect of the said fact with due diligence, then no amendment is to be allowed. In view of above fact, I proceed to pass the following order.

ORDER

The application is rejected with costs.

Place – Karjat
Date - 03/09/2024

(Smt. A. S. Wadkar)
Civil Judge, J.D., Karjat,
District - Raigad