

**ORDER BELOW EXH. 89 IN RCS NO. 278/2015**

(Sheela Patil & Ors. Vs. Sampat Patil & Ors.)

1. Present application is filed by plaintiffs seeking two-fold permission covered under Section 151 and Rule 17, Order 6 of the Code of Civil Procedure.

2. It is submitted that, earlier to this application my predecessor was pleased to allow application for amendment Exh. 45 on 16/04/2022. The plaintiff was permitted to amend the suit by adding defendant as well as pleading therein. Accordingly, plaintiffs arrayed defendants in their plaint as per order, however, failed to add pleading as per permission granted. Now by way of present application they have sought permission to add the proposed pleading as permitted vide order passed below Exh. 45. Besides this, plaintiffs submitted that defendants have executed some sale deeds prior to filing the suit, but it was not pleaded by them in the suit and if such permission is refused, it will cause irreparable loss to them. It is further submitted that, suit is yet to be posted for hearing and therefore there is no hurdle to allow the application for amendment. Besides this, by invoking inherent powers, permission needs to be granted to amend the suit by adding proposed amendment as per order below Exh. 45.

3. Defendants strongly resisted the application. It is submitted that, the application is devoid of merits. No such permission can be granted when party failed to carry out necessary amendment within stipulated time as envisaged in Rule 18, Order 6 of Code of Civil Procedure. Besides this, the plaintiff is trying to claim hot and cold

relief at the same time. Moreover, nothing is mentioned which suggest that plaintiffs were precluded to carry out amendment. The period of 15 months is lapsed since date of order. Once prescribed time is over, the party is precluded to carry out the amendment. Apart from it, the relief in respect of sale deed executed in the year 2009 cannot be subject matter of litigation due to law of limitation, because plaintiff sought relief of declaration after lapse of 14 years. Nowhere in the application they had clarified when and how they came to know about such sale deed and what are the circumstances which precluded them from objecting those sale deeds in this suit. On this count the application needs to be rejected.

4. Having regard to the submissions of both sides, perused record of proceeding.

5. Rule 18, Order 6 specifically envisage that the applicant shall not be permitted to amend after expiration of prescribed period unless the time is extended by the Court. On perusal of record it suggest that plaintiffs after the order passed below Exh. 45 partly amended the suit. That was well within limitation. However, they had not added the pleading for which they sought permission. Plaintiffs in their arguments submitted that it was an act of inadvertence, no malafide intention to omit the compliance. Per contra, defendants resisted on the count that limitation to carry out amendment was expired. Certainly record suggest that plaintiffs failed to carry out amendment as per para 4A in the plaint. However, they had partly complied with the order and no explanation except the act of inadvertence is given

for failure to add para 4A.

6. It is true that Rule 18 prescribes limitation to grant permission to carry out amendment, but it also provide an opportunity to invoke the discretionary power under Section 151 of CPC, as the provision contemplated unless the time extended by the Court. Therefore, such permission to carry out amendment after expiry of time is nothing but extension of time. There is no implied or express bar to grant extension of time. Herein the present case the circumstances clearly indicates that plaintiffs had complied with the order partly. It would be proper to consider that if permission sought for would deprive plaintiffs from seeking any relief against defendants which were arrayed by virtue of order passed below Exh. 45. Moreover, these defendants becomes mis-joinders to the litigation, as plaintiffs are precluded not only to seek relief but also to adduce any evidence for want of pleading. Therefore, considering all these aspects as well the failure of defendants to show malafide intention of plaintiffs to omit the compliance to have wrongful gain in this trial of the suit, I come to conclusion that permission needs to be granted.

7. It is just to mention here that, after 2002 the legislature amended Rule 17, Order 6 of CPC by adding proviso which restrict the discretionary powers of the Court to decide the amendment application with intention to avoid delay in civil litigation. By way of said amendment once suit is posted for hearing, thereafter the Court is not empowered to allow the amendment application unless the party seeks relief satisfactorily shown due diligence to seek relief of

amendment.

8. It is settled position of law that, after adducing evidence by plaintiffs, more specifically after filing their affidavit of chief-examination the suit is supposed to be posted for hearing. Herein the present case issues are yet to be framed, therefore, no doubt the suit is yet to be posted for hearing. Thus, the application is well maintainable in respect of limitation, provided in Rule 17.

9. Another aspect for consideration is in respect of limitation to seek relief. It is settled position that the limitation prescribed for relief of declaration is three years. Before parting for discussion, another facet ought to be taken into consideration that the amendment would amend the suit on the day of cause of action.

10. Plaintiffs by way of proposed amendment sought declaration against the sale deeds executed in 2009 by defendant No. 1 with defendant No. 5. Therefore, on the face of record it is clear that the relief of declaration is sought after lapse of 11 to 12 years. Moreover, even if considering that the relief sought in the suit pending since 2015, then also, question arose in respect of the limitation. It is true that relief which is barred by limitation cannot be subject of the litigation. However, it is settled position of law that issue of limitation is mixed question of law and facts. Therefore, merely the relief of declaration is sought after lapse of 11 to 12 years or at least after 6 years, the relief for amendment need not to be rejected at threshold. The opportunity to prove as well as to disprove the pleaded facts is

available to both sides. Therefore, merely on the count of limitation it is not proper to reject the application. Even such amendment would not cause prejudice to either side because as mentioned above plaintiffs are under burden to prove the facts which are positively asserted and defendants have onus to disprove them. Hence, I arrive at conclusion that the permission to add proposed amendment as 5A and 12-B(2) in the plaint.

11. For the reasons above I arrive at conclusion that plaintiffs are entitled for permission to carry out remaining amendment as per order passed below Exh. 45, as well as, to add pleading 5A and 12-B(2). However, considering the conduct costs must be imposed, as a matter of caution and to solace the defendants due to delay in trial. Hence, following order.

**ORDER**

- (1) Application is allowed, subject to costs of Rs. 1,500/- (Rs. One thousand five hundred only) to be paid to plaintiffs on or before next date.
- (2) Plaintiffs to carry out the proposed amendment within stipulated time and produce the amended copy of plaint on record forthwith.

Islampur.  
Date : 16/08/2023

(M.M. Chitale)  
Joint Civil Judge Senior Division,  
Islampur.