

MHST130004802010 	RCS No. 129/2010 Ganapati Sonawale V/s Aaba Sonawale
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ORDER BELOW THE APPLICATION AT EXH 122

The present application has been filed Defendant No. 33 under Order VI Rule 17 of the Code of Civil Procedure, 1908, seeking permission to amend the extant Written Statement and Counter-claim (Exhibit 64). The original cause of action, as instituted by the Plaintiff, pertained to a suit for partition and separate possession of the subject property, Gat No. 19 / Old Survey No. 99/2, coupled with a prayer for a mandatory injunction necessitating the demolition and removal of purported unauthorised structures and encroachments erected by Defendants No. 19 to 34. Perusal of the record evidences that the initial Written Statement and Counter-claim were submitted by the Defendant No. 33 on the 03rd day of December 2015. Subsequent to the framing of issues *vide* Exhibit 104 on 20th January 2022, the Plaintiff adduced evidence by way of an affidavit.

02. The Applicant (Defendant No. 33) sought the proposed amendment upon the contention that the Plaintiff had deliberately failed to implead all necessary legal representatives of the antecedent family member, Laxman, a deficiency that was cursorily alluded to in the original defense (Paragraph 13). Crucially, the Applicant asserted the recent acquisition of vital documentary evidence, specifically official records pertaining to birth and death and Gram Panchayat house registration extracts. These antiquated records, originally transcribed in the obsolete Modi script, had only

recently been successfully transliterated into Marathi. The Applicant's submission was that the incorporation of these newly discovered facts was *sine qua non* to accurately depict the complete and correct genealogical nexus and the historical tenure of the land, which tenure was claimed to date back to approximately 1850, involving the initial co-owners Nathu and Nayku. It was emphatically argued that precluding the Applicant from incorporating these essential averments would occasion irremediable prejudice and impede the Court's ability to render a comprehensive and conclusive adjudication.

03. The proposed amendments incorporated primarily: a) the rectification and elaboration of the complete pedigree within the Counter-claim (Exh. 64, Para 11), including the specification that individuals such as Ramu, Ram, and Sitaram expired *sine prole* ("विनावारस मयत") and the accurate delineation of definite heirs for others (Bajrang and Sham); b) the insertion of new Paragraphs 13(a), 13(b), and 13(c). These new paragraphs detailed the historical joint possession commencing from the 1900s, asserted that the suit was barred by the Law of Limitation (*non-maintainable*), and incorporated a necessary challenge to a Gift Deed executed by the Plaintiff on 03.10.2015 (*pendente lite*), concerning an as-yet undivided share of the joint property. Specifically, the proposed Para 13(a) explicated the historical quantum of shares (8 *aane* among Nathu and Nayku's progeny) and their continuous possession since 1850. Para 13(b) advanced the legal plea that the suit was time-barred and suffered from the vice of Non-Joinder of Necessary Parties, predicated upon the newly translated records. Para 13(c)

constituted a direct challenge to the Gift Deed (Document No. 2415/15 dated 03.10.2015), asserting that the Plaintiff possessed no legal competence or entitlement to effect a conveyance of an undivided fractional share prior to formal severance by partition.

04. The Non-Applicant (Plaintiff) opposed the application, asserting the entire claim of Defendant No. 33 to be vexatious and lacking in veracity. The Plaintiff specifically contended that Defendant No. 33 and his predecessors-in-interest possessed no subsisting right, title, or interest, nor any connection whatsoever, to the disputed property (Gat No. 19 / Old S. No. 99/2), and that the Defendant failed to adduce any *prima facie* documentation substantiating such a claim. The Plaintiff maintained that Defendant No. 33, therefore, lacked locus standi to prosecute the counterclaim. Furthermore, the Plaintiff emphasised the inordinate and unexplained delay of approximately eight years in moving the application for amendment, noting its presentation subsequent to the tendering of evidence and the effective commencement of the trial. The Plaintiff averred that the Applicant failed to furnish a cogent justification for this delay and neglected to demonstrate the exercise of due diligence to procure the "new" documentation at an earlier juncture. The Plaintiff further prayed that, should the Court deem fit to grant the amendment notwithstanding the substantial delay, the Applicant ought to be mulcted with compensatory costs quantified at Rs.25,000/-.

05. Upon careful consideration of the rival submissions, it is noted the application fell within the purview of the proviso to Order

VI Rule 17 of the CPC. This statutory mandate prescribes that, subsequent to the commencement of trial, no application for amendment shall be granted unless the Court is satisfied that the newly sought facts could not have been raised earlier despite the exercise of due diligence by the petitioner. Although the efflux of a substantial period, approximating eight years, constituted a material procedural irregularity, the rationale proffered by the Applicant—namely the recent discovery and subsequent translation challenges attendant upon securing historical documentation inscribed in the archaic Modi script—was deemed to merit equitable consideration. It is recognised that the inherent complexities and temporal exigencies associated with the procurement, authentication, and rendition of antiquated public records, thus satisfying the threshold criterion of demonstrating due diligence *dehors* the delay. Furthermore, it was observed that the paramount object of the instant suit was partition, wherein the Court holds an inherent obligation to ascertain the true pedigree, establish the quantum of shares of all co-parceners, and ensure the joinder of all indispensable parties for a definitive adjudication. The Court noted that the initial Written Statement *already* raised the fundamental impediments of Non-Joinder of Necessary Parties and the deficient pedigree. This confirmed that the defense was not a novel creation but a critical detail whose full substantiation necessitated the facts now revealed by the translated documents. Consequently, having regard to the nature of the evidentiary material, the Court was satisfied that the failure to incorporate these precise facts earlier stemmed from practical difficulties inherent in accessing and deciphering historical

records, and not from any want of probity on the part of the Defendant.

06. The Applicant placed reliance upon the ratio decidendi established in Mr. Teotonio Faustino Vas & others v.s Smt. Ana Maria Rodrigues & another (2019(6) ALL MR 582) and Vishal Nitinkumar Kondhia v/s Jahnvi Vishal Kondhia (2018 (4) All MR 893). The principles enunciated in these judicial precedents were found to possess direct applicability *sub judice*. These rulings affirm the fundamental jurisprudential norm that the Court must grant necessary amendments to settle the complete controversy between the litigants and to avert the initiation of a multiplicity of legal proceedings. As the Defendant's amendment was indispensable for challenging the Plaintiff's Gift Deed (a conveyance effected *pendente lite*) and for definitively resolving the joint property dispute, the granting of the amendment was requisite to ensure a complete and conclusive decree was rendered in this singular action.

07. It was therefore concluded that the proposed amendments were not immaterial but were essential for the determination of the genuine issues *in controversy*. A significant consideration was the fact that the Plaintiff had adduced his evidence affidavit, yet the cross-examination thereof had not been consummated. This was a pivotal finding. Given that the testimony of the Plaintiff remained subject to rebuttal, the trial was not deemed so far advanced as to render the amendment an unjust intrusion. This temporal placement afforded the Plaintiff the opportunity to address the new factual matrix presented by

Defendant No. 33 during the continuation of the cross-examination and by the subsequent filing of a detailed rejoinder. I have also considered whether the proposed amendments were barred by the Law of Limitation.

08. The Applicant's proposed amendment, including the challenge to the Gift Deed executed on 03.10.2015, was necessitated by a subsequent event occurring during the *lis pendens*. A conveyance of an undivided fractional share during a partition suit is an event that must be adjudicated by the Court for the comprehensive resolution of the matter. Therefore, permitting the challenge to this instrument was mandatory to prevent the Defendant from being compelled to institute a separate suit, thereby pre-empting the aforementioned multiplicity of legal proceedings. Furthermore, the inclusion of the legal pleas regarding the Law of Limitation in Para 13(b) merely improved the existing defense already articulated in the original Written Statement.

09. The amendment did not seek the overview of an entirely *de novo* claim that was otherwise barred by time. As the Court's primary duty was to permit all facts requisite for the determination of the *real controversy*, and the amendment bore a proximate nexus to the original dispute concerning possession and share, the technical plea of limitation did not operate as a jurisdictional bar to the amendment.

10. The amendment did not effect a change in the fundamental nature of the counterclaim, which remained a petition for partition and the protection of the joint property. The

supplementary facts merely provided necessary particulars and legal corollaries (limitation and the challenge to the Gift Deed) directly connected to the initial subject matter.

11. Finally, it is determined that the proposed amendment would not occasion any irremediable prejudice to the Plaintiff. Since the Plaintiff was the author of the Gift Deed dated 03.10.2015, the Plaintiff could not profess surprise at the Defendant's challenge thereto. Any disadvantage arising from the delay and the attendant necessity for fresh factual examination could be adequately neutralised by the imposition of pecuniary sanctions (costs). The rejection of the amendment solely on the ground of delay would necessitate the Applicant filing a fresh suit to challenge the Gift Deed or to seek his share based on the new documentation, culminating in a multiplicity of legal proceedings, which the law seeks to avoid. Therefore, to ensure that final justice was administered and the entitlements of all co-sharers were conclusively determined in this singular suit, the necessity of the amendment superseded the technical objection concerning the procedural delay. The Applicant had successfully discharged the burden of proving that, notwithstanding the exercise of due diligence, the presentation of the crucial facts supported by the recently translated documents was not feasible prior to the commencement of the trial.

12. Thus, achieving a balance between the imperatives of justice and the procedural infirmity occasioned by the delay, this Court arrived at the determination that the application ought to be

granted, subject to the payment of compensatory costs. Hence, I pass the following order.

ORDER

1. The Application is hereby allowed.
2. Defendant No. 33 is hereby permitted to effect the necessary amendments to his original Written Statement and Counter-claim as particularised in his application (Paras 4(1) to 4(3)).
3. Defendant No. 33 is hereby directed to pay compensatory costs quantified at ₹1,000/- (Rupees One Thousand Only) to the Plaintiff. Said costs shall be remitted within seven (7) days from the date of this judicial order.
4. Defendant No. 33 shall file the Amended Written Statement/Counter-claim before this Court within a period of seven (7) days from the date of this order.
5. The Plaintiff shall be accorded the opportunity to file a Reply/Additional Written Statement to the Amended Written Statement/Counter-claim, should the Plaintiff be so advised.

Date:- 08/10/2025

(Rajesh M. Lolge)
Civil Judge, Jr. Division, Patan