

Order Below Exh.29 in R.C.A. 56 of 2014

Ramesh Shankar Bhosale

Vs.

Popat Kondiba Shinde etc.

1. After going through the contentions in the application and say filed by the respondents and after hearing the Ld. Counsels for appellants and respondents, following points arise for my determination. I have recorded my findings thereon with reasons thereto as follows:

Sr.No	Points	Findings
1.	Whether the proposed amendment is necessary for the purpose of determining the real question of controversy between the parties ?	No.
2.	Whether the appellants are entitled to seek permission to amend the plaint as suggested at this stage ?	No.
3.	What order ?	As per final order.

REASONS

As to Point no.1 & 2:

2. Being aggrieved by the judgment and decree passed by the Jt. C.J.J.D. Vaduj in Reg.C.S.No. 27/2006 on 17.10.2014, the appellants who are the original plaintiffs have preferred this appeal. The description of the suit property is given in Schedule-1 at Sr.No.1.

The landed property of S.No.72/2 area Hectare 1=79 R assessed at Rs.8=6 Paise, is the property described at Sr.No.1. According to the appellants, there is property of S.No.70/1 having area Hectare 0=6 R assessed at Rs.7=25 Paise towards the northern side of aforesaid property. The controversy arose in respect of the enjoyment of the well erected in accordance with the Jawahar Scheme and boundaries of property between appellants and respondents. The measurement was called prior to institution of the suit claim. According to the appellants, it was reported that 42 R portion of Southern-Eastern side out of S.No. 70/1 is in occupation of appellant no.1. Appellant no.1 dug a well under Jawahar Scheme in that portion itself in the year 1992. The appellants also dug another well during the pendency of this suit claim towards the Western side of the suit property on the bank of Nandani river. There is no any clarification in the plaint that the appellants dug a well on the bank of Nandani river in S.No. 70/2. It is necessary to give explanation in respect of well dug in said 42 R portion under Jawahar Scheme as well as the well dug on the bank of Nandani river. The said reference is necessary to determine the real question of controversy involved in the suit. Therefore, amendment under consideration is suggested.

The appellants are intending to insert the property of S.No.70/1 at Sr.No.2 in plaint Para-1 after the description of property of Sr.no.1. They are also intending to insert the clarification in this regard by way of averments in Para-5A in the plaint. They are also intending to add another relief of declaration and consequential relief of permanent injunction in prayer clause-7.

3. The Ld. Counsel for the appellants submitted his arguments in support of the contentions of the appellants in this regard. He submitted that though the application under consideration is filed at appellate stage, still it is maintainable at this stage. In support of his submission in this regard, he placed his reliance upon legal proposition laid down by the Hon'ble Apex Court in the case of ***Chakreshwari Constructions Pvt. Ltd. Vs. Manohar Lal [2017(5) Mh.L.J. 195]***. Relying upon the observations in this ruling, he submitted that the Hon'ble Apex Court has held in this case that,

“The parties are permitted to amend their pleadings at any stage not only during the pendency of trial but also at first and second appellate stage with leave of the Court, provided amendment proposed is bonafide, relevant and necessary for deciding the rights of the parties involved in lis.”

4. The Ld. Counsel further submitted that the bar of amended proviso under Rule 17 of C.P.C. will not also come in the way to refuse the leave to amend the plaint. He again placed his reliance upon the proposition of the law laid down by the Hon'ble Apex Court in this regard in the case of ***Varun Pahwa Vs. Renu Chaudhary [2019 AIAR (Civil) 482]***, wherein it is held that,

“The Rules of Procedure are handmaid of justice and cannot defeat the substantive rights of the parties. It is well-settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the Rules of Procedure. The Court always give leave to amend the pleadings even if the party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any

such narrow or technical limitations”.

5. The Ld. Counsel for the appellants also relied upon the legal propositions laid down by the Hon'ble Apex Court in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd. [2018 AIAR (Civil) 102]***. It is held in this case that,

“The power to allow the amendment of suit is wide and the Court should not adopt hyper technical approach in considering amendment applications, Court should adopt liberal approach and amendments are to be allowed to avoid multiplicity of litigations. Mere delay in seeking amendment of pleadings is not a ground for rejecting the amendment”.

6. In order to clarify as to why the proposed amendment is necessary to determine real question in controversy, the Ld. Counsel submitted that the suit claim under consideration is outcome of the controversy arose on the count of boundaries of the properties of the appellants and respondents and exact location of the well dug by the appellants under Jawahar Scheme. Admittedly, the property of S.No.72/2 i.e. the suit property is owned by the plaintiff. The proposal to sanction the well under Jawahar Scheme was submitted by the appellants to State Government. The State Government accorded the sanction. Thereafter, the well in question was dug. The well was dug on the portion which was in actual possession of the appellants. The entries to that effect is also made towards the record of rights. The joint measurement report of Exh.45 came on record during the pendency of the suit. The respondents started to claim ownership to the well in question which is dug by the appellants under Jawahar Scheme. According to the appellants, the respondents

are intending to take undue advantage of another well dug by the appellants on the bank of Nandni river and emphasizing that the said well is the well dug by the appellants under the Jawahar Scheme. In fact, the well which is shown in the measurement map within the area of S.No. 70/1 is the well in question dug under the Jawahar Scheme as the said portion is actually in possession of the appellants. The appellants are enjoying the said portion as the portion of their property. The Ld. Trial Court placed its reliance upon the measurement map and gave finding in the judgment under appeal, as there is no such clarification on record. He added that, the amendment under consideration which itself is explanatory in nature, will help the Court to determine real question of controversy involved in this suit claim. He further submitted that no prejudice will cause to the respondents if the leave to amend the pleadings as prayed is granted. He again added that the respondents have also right to file the written statement on amended pleadings. If the amendment as prayed is not allowed, then very purpose to file the suit claim will frustrate. It will also result into multiplicity of the proceeding. The amendment in question is also based upon subsequent events. For all these reasons, he prayed to grant leave to amend the plaint as prayed.

7. The Ld. Counsel for the respondents while resisting the application by way of say at Exh.32 vehemently submitted that the appellants are intending to rely upon the legal propositions of the Hon'ble Apex Court under aforesaid rulings. However, the rulings are not applicable to the case in hand. He submitted that in the case of ***Varun Pahwa Vs. Renu Chaudhary (supra)***, error in inserting the name of company was occurred. The amendment was prayed to

correct the aforesaid error. The application was immediately filed within time. The amendment was allowed under the said circumstances. Though the appellants are contending that the amendment can be suggested at any stage, is not the said situation itself is not sufficient. He submitted that, it is necessary to see whether the amendment is within limitation. To substantiate his submissions in this regard, the Counsel for the appellants placed his reliance on observations of our parent High Court in the case of ***Harinarayan Bajaj Vs. Vijay Agarwal [2012(2) Mh.L.J.106]***. Relying upon the observations in this ruling, he submitted that an application for amendment in pleadings must be made within the period prescribed by Article 137 of the Limitation Act. Court must see when the right to apply for the amendment of pleadings accrued to the plaintiff and compute the period of limitation from the date when the right is accrued.

8. The Ld. Counsel submitted that the application under consideration itself is filed with an ulterior motive. The application is not bonafide one. He placed reliance upon the observations in the case of ***Chakreshwari Constructions Pvt. Ltd. Vs. Manohar Lal (Supra)*** and submitted that the leave has to be granted by the Court if the proposed amendment is bonafide, relevant and necessary for deciding the rights of the parties involved in lis. He added that here in the case in hand, the amendment under consideration is not bonafide. To substantiate his submissions in this regard, he invited my attention towards the sale-deed and the measurement map of Exh.45. Relying on these documents he submitted that area of the property of respondents as described in the sale-deed executed in favour of the

appellants is Hectare 1=79 R land. The appellants are contending that 43 R portion out of S.No. 70/1 is in his occupation. They are also cultivating said portion under bonafide impression that the same is the part and parcel of the suit property and they are in possession of the said portion. However, contention of appellant in this regard itself is misleading contention. The Ld. Counsel placed his reliance upon the measurement map of Exh.45 and submitted that the Measurement Officer has never reported that the said portion is encroached portion and in possession of the appellants. He has just reported that the said portion is out of survey number (which is belonging to respondent) and appellants are claiming that they are in possession of said portion. "या रंगाचे रंगाने दाखवलेले क्षेत्र (फिकट निळे), प्रतिवादी याचे ७०/१ असून ते क्षेत्र सुमारे ०.४२ आर असून त्यावर वादी हक्क सांगत आहे" The suit claim under consideration is filed in the year 2006, whereas the measurement in question was carried out in the year 2008. The appellants were aware of the fact that they are not in possession of the said 42 R portion at any stage. The appellant have also not proved their exclusive possession over the suit portion. On the contrary, there is substantial evidence on record to show that said portion is owned and actually possessed by the respondents. He added that if the amendment as suggested is allowed, then the nature and structure of the suit claim will be changed. Such type of amendment is not permissible. The cause of action to claim the aforesaid relief is also not occurred prior to institution of the suit claim of even subsequently during pendency. In such circumstances, the amendment cannot be considered to be bonafide one. In support of his submissions in this regard, the Ld. Counsel placed his reliance upon the legal propositions laid down in *Chakreshwari*

Constructions Pvt. Ltd. Vs. Manohar Lal (Supra). He further submitted that it is cardinal principle that time barred amendment cannot be considered. The measurement is carried out on 06.12.2008. It means the cause of action to suggest the amendment was accrued on the date of report. The amendment is not suggested within stipulated period from the date of occurrence of cause of action to suggest amendment. Therefore, the amendment in question is time barred. It cannot be said that amendment is bonafide amendment at this stage. The Ld. Counsel for the respondents also submitted that the amendment in question itself is inconsistent to the pleadings. It is also not in consonance to the earlier amendment suggested by way of application of Exh.117. For all these reasons, he prayed for rejection of the application.

9. I have gone through the pleadings, evidence available on record, judgment under appeal and the grounds of objection on the background of submissions. I have also gone through the rulings cited on behalf of the appellants as well as respondents on the background of the submissions. The appellants have filed the suit claim in the Ld. Trial Court for the relief of permanent injunction restraining the respondents from causing obstruction to their possession in the suit property. The prayer of fixation of boundaries of the properties which itself is vague in nature is also inserted in prayer clause. The amendment was suggested by way of application of Exh.117. The said amendment is of similar nature but in different words. The said amendment is allowed. The appellants are now intending to add description of one more property as suit property, prayer of declaration and certain portion in the form of clarification by way of

amendment. If the proposed amendment is considered on the background of legal proposition laid down in *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others* [2009 *Mh.L.J. Online (S.C.) 12*], then I have no hesitation to come towards the conclusion that the amendment sought is not imperative for proper and effective adjudication of the case. The nature and structure of the suit claim will change if the amendment as prayed is allowed as rightly submitted by Ld. Counsel for the respondents. The appellants are intending to seek the relief of declaration in respect of the well in Southern-Eastern corner of the property of S.No.70/1. The cause of action to seek the relief was occurred on same date when cause of action for the suit claim for the relief of permanent injunction was occurred. There is no any explanation on the part of the plaintiff-appellants as to why the said relief of declaration was not sought while institution of suit claim when there was denial of ownership on specific portion on the part of respondent. It is held in the case of *Revajeetu Builders and Developers Vs. Narayanaswamy (supra)* that,

“As general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application”.

10. The amendment which is introducing the prayer of declaration of ownership at such belated stage and that too after lapse of somewhere 10 to 12 years from the date of institution of suit claim cannot be allowed in given circumstances. The insertion of the portion by way of Para-5A is not necessary to determine the real question of controversy involved in this suit. The measurement authority has not

specifically reported that the said 42 R portion is in occupation of the plaintiff-appellants. Therefore, the amendment under consideration is not necessary for determination of the relief in question of controversy involved in the suit. Though I agree with the submissions of the Ld. Counsel for the appellants that the amendment application is maintainable at the appellate stage as well as proviso under Rule 17 of C.P.C. will not come in the way to refuse the amendment based upon legal propositions laid down in rulings cited on behalf of appellant. I do not agree with his further submission that amendment under consideration is bonafide and necessary for determination of the real question of controversy involved in the suit. On the contrary the submissions of respondents are acceptable. Therefore, I answer point no.1 and 2 in the negative and proceed to pass the following order.

ORDER

1. Application is rejected.
2. Both parties to take a note of this order.

Vaduj.
Dt. 21.09.2024

(Rajendra V. Huddar)
District Judge-1, Vaduj.