



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 554 OF 2018

Shri Bharat s/o Gangabisan Kalantri Through POA
Kartik Bharat Kalantri

-Vs.-

Murarka Shivhare Housing Complex Pvt. Ltd. and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.R.R.Srivastava, counsel for the petitioner.
Mr.Vikas L. Jaiswal, counsel for respondent No.1.

CORAM : MANISH PITALE, J.

DATE OF CLOSING: 08.02.2019.

DATE OF PRONOUNCING: 07.03.2019

By this writ petition, the petitioner (original defendant No.3) has challenged order dated 18/01/2018 passed by the Court of 5th Joint Civil Judge, Senior Division, Nagpur (Trial Court), whereby an application filed by respondent No.1 (original plaintiff) for amendment of plaint, Exhibit-161, was allowed, subject to payment of costs of Rs.5,000/- to each of the contesting defendants.

2. Respondent No.1 (plaintiff) filed Special Civil Suit No.463 of 2006 against the petitioner and other defendants for declaration, permanent injunction and for cancellation of sale deeds. It was the case of respondent No.1 that the predecessor of respondent Nos.2-a to 2-h had sold suit property to



respondent No.1 by registered sale deed in the year 1988 and that respondent No.1 was placed in possession of some portion of the suit property. It was further contended that thereafter, the predecessor of respondent Nos.2-a to 2-h executed registered sale deed in the year 1993 in favour of respondent No.1 in respect of the remaining portion of the suit land. According to respondent No.1, despite having sold the suit property in favour of respondent No.1 by registered sale deeds executed in the years 1988 and 1993, the predecessor of respondent Nos.2-a to 2-h fraudulently sold part of the suit property in favour of petitioner. In that context, respondent No.1 sought decree of declaration, permanent injunction and cancellation of sale deeds. The petitioner filed his written statement before the Trial Court and issues were framed by the Trial Court on 06/03/2010.

3. It has come on record that during the pendency of the suit, respondent No.1 (original plaintiff) had already amended the plaint on three occasions in the years 2006, 2013 and 2014. By those amendments, respondent No.1 had incorporated pleadings pertaining to events that had occurred subsequent to filing of the suit and on some other aspects, which the Trial Court had granted.



4. At this stage, on 28/08/2017, respondent No.1 moved another application under Order VI Rule 17 of Civil Procedure Code (CPC) for amendment of plaint. By the said proposed amendment, respondent No.1 sought to correct the cause title of the suit and desired to elaborately place on record facts that, according to respondent No.1, were necessary to decide the real questions in controversy between the parties. The petitioner filed his reply on 11/09/2017 to the said application of respondent No.1 and opposed the same, contending that such piecemeal amendment of the plaint could not be permitted, particularly when the plaint had been amended on three occasions earlier and the suit had been pending before the Trial Court since the year 2006. It was also contended that the trial had commenced because the issues had been framed and that the application of respondent No.1 was hit by proviso to Order VI Rule 17 of CPC.

5. By the impugned order dated 18/01/2018, the Trial Court allowed the application, subject to payment of costs as noted above. It was also held that since the Trial Court had only framed issues and affidavit in evidence was yet to be filed and examination of witness of the plaintiff was yet to take place, it could not be said that the trial had commenced and that therefore, the proviso to Order VI Rule 17 of Civil Procedure Code was not



applicable. It was further held that the proposed amendment was nothing but an effort on the part of respondent No.1 to elaborate the pleadings already on record and further that since there was no period of limitation for filing amendment application, the said application was required to be allowed. The petitioner has filed the present writ petition challenging the said impugned order.

6. Mr. R.R.Srivastava, learned counsel appearing for the petitioner, submitted that the finding rendered by the Trial Court that since affidavit in lieu of evidence was yet to be filed on behalf of respondent No.1, the trial had not commenced, was against settled principle of law laid down by the Hon'ble Supreme Court that trial commences upon framing of issues by the Trial Court. According to the learned counsel, it was undisputed that issues had been framed by the Trial Court as far back as on 06/03/2010 and that therefore, trial had commenced. On the merits of the amendment, the learned counsel pointed out that after the plaint had been amended thrice, respondent No.1 had failed to make out a case for amendment of the plaint on the fourth occasion by filing an application on 28/08/2017. It was submitted that a perusal of the proposed amendment demonstrated that it ran into several pages and that it virtually amounted to changing



the very nature of the dispute between the parties. It was submitted that correction sought in the prayer clause could not have been granted because respondent No.1 was now seeking to challenge a registered sale deed executed on 05/05/2006, which was clearly barred by limitation. Therefore, it was submitted that the Trial Court had erred in passing the impugned order.

7. On the other hand, Mr. V.L.Jaiswal, learned counsel appearing for respondent No.1, submitted that the findings rendered by the Trial Court in the impugned order were in tune with the position of law. The trial was yet to commence in the present case. On merits of the amendment, it was submitted that respondent No.1 was not only elaborating, what was already stated in the plaint, but which was necessary for deciding the real question in controversy between the parties. According to the learned counsel for respondent No.1, this satisfied the requirement of Order VI Rule 17 of CPC. As regards correction in the prayer clause, it was submitted that all the pleadings pertaining to challenge to registered sale deed dated 05/05/2006 were already on record by way of earlier amendments, but, only due to a typographical error, the date of the sale deed could not be incorporated earlier. In this backdrop, it was submitted that the writ petition deserved to be dismissed and the



impugned order of the Trial Court was required to be confirmed, in the interest of justice.

8. Heard the learned counsel for the parties and perused the record. In the present case the suit was filed in the year 2006. The main grievance of respondent No.1 is that the predecessor of respondent Nos.2-a to 2-h sold parts of the suit property to other defendants including the petitioner herein, despite having sold the entire suit property earlier in points of time to respondent No.1. It was submitted that the said act was fraudulent and that the petitioner and other defendants could not have acquired a lawful claim to part of the suit property. It has come on record that the plaint was amended earlier on three occasions by orders dated 06/03/2006, 08/04/2013 and 17/10/2014. The impugned order allowing amendment was based on fourth application of amendment filed on behalf of respondent No.1. It has come on record that issues in the present case were framed by the Trial Court on 06/03/2010. Therefore, the aforesaid fourth application for amendment on behalf of respondent No.1 on 28/08/2017 was filed clearly after framing of issues. The question is, as to whether it could be said that trial had commenced in the present case.

9. In this connection, the learned counsel for



the petitioner has relied upon judgments of the Hon'ble Supreme Court in the case of **Kailasha v. Nankhu and others, (2005) 4 SCC 480** and **Ajendraprasadji N. Pandey and another v. Swami Keshavprakeshdasji N. and others, (2006) 12 SCC 1**. A perusal of the relevant portions of the said judgments shows that trial is said to have commenced when issues are settled or framed and the case is set down for recording of evidence. In view of the said position of law, it becomes clear that the Trial Court certainly erred in holding that trial had not commenced in the present case, because although issues were framed on 06/03/2010, affidavit in lieu of evidence was yet to be filed and that evidence of witness of respondent No.1 (original plaintiff) was yet to be recorded. To that extent the learned counsel is justified in holding that the Trial Court could not have said that the trial was yet to commence in the present case.

10. Once it is held that the trial commenced in the present case, proviso to Order VI Rule 17 of CPC is activated, because it prohibits amendment of pleadings, once trial has commenced with the only exception that the party seeking amendment is able to demonstrate that even with due diligence, the party could not have sought amendment of the pleadings prior to commencement of trial. Thus, in the present case, since the proviso to Order VI Rule



17 of CPC is found to be applicable, it becomes necessary to examine as to whether sufficient grounds were made out by respondent No.1 for its application for amendment being allowed in the facts and circumstances of the present case.

11. In order to examine the aforesaid aspect of this case, it would be necessary to advert to the position of law as to the manner in which amendment of pleadings could be allowed despite trial having commenced. A perusal of Order VI Rule 17 of CPC shows that the Rule permits amendment of pleadings in order to facilitate the Trial Court to decide the real question in controversy between the parties. Therefore, one of the crucial aspects under the said Rule becomes the examination of the proposed amendment to see whether it would be necessary to decide the real question in controversy between the parties. This obviously points towards the object of the Rule which is to avoid multiplicity of litigation and to ensure that all disputes that arise between the parties pertaining to a particular subject matter are decided in a single proceeding. It has been also laid down in various judgments of the Hon'ble Supreme Court that the Trial Court should examine, while considering the question of amendment of pleadings, as to whether permitting such amendment would cause any prejudice to the rival party. If there is no prejudice likely to be



caused to the rival party, a liberal approach for granting such amendments has been suggested. In this context, the learned counsel appearing for respondent No.1 is justified in relying upon the judgments of the Hon'ble Supreme Court in the case of **Raj Kumar Bhatia v. Subhash Chander Bhatia, (2018) 2 SCC 87, Mohinder Kumar Mehra v. Roop Rani Mehra and others, (2018) 2 SCC 132** and judgment of this Court in the case of **Rajaram Naik v. State of Goa and others, 2016(1) Mh.L.J. 770.**

12. Apart from this, in the case of **Revajeetu Builders and Developers v. Narayanaswamy and sons and others, (2009) 10 SCC 84**, after taking into consideration earlier judgments, the Hon'ble Supreme Court has laid down certain factors to be taken into consideration while dealing with applications for amendment. The relevant portion of the said judgment reads as follows:-

Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;



(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a 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.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

64. The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

13. It is relevant that the said judgment of the Hon'ble Supreme Court has been delivered after proviso to Order VI Rule 17 of CPC was incorporated in the year 2002. Therefore, despite embargo in the said proviso against allowing amendments after commencement of trial, the Hon'ble Supreme Court has emphasized on examining whether the proposed amendment can be said to be mala fide and whether it would cause



prejudice to the other side, which could be compensated adequately in terms of money.

14. Examining the amendment that was proposed by respondent No.1 in its application moved before the Trial Court on 28/08/2017, it is found that respondent No.1 has sought to place on record details pertaining to transactions regarding which pleadings were already placed on record in the plaint. Although, the proposed amendment runs into number of pages, that in itself cannot be a ground to reject the proposed amendment. A perusal of the proposed amendment shows that respondent No.1 desires to place on record details pertaining to transactions, in respect of which, reference has already been made in the plaint itself. Therefore, it cannot be said that any specific prejudice would be caused to the petitioner by granting such amendment. The said amendment can also not be said to be mala fide in nature. The only remaining aspect emphasized on the part of the petitioner was that respondent No.1 was seeking to amend or correct the prayer clause to incorporate a challenge to registered sale deed dated 05/05/2006 by way of amending the plaint on 28/08/2017. According to the learned counsel for the petitioner, since challenge to the aforesaid sale deed dated 05/05/2006, in the year 2017 was barred by limitation on the face of it, such an amendment



could not have been permitted by the Trial Court. In response, it was submitted that on behalf of respondent No.1 that pleadings pertaining to challenge to the said sale deed were already on record by way of previous amendment and that only the date of the sale deed was wrongly mentioned because of a typographical error.

15. A perusal of the documents on record shows that reference to the sale transaction pertaining to the sale deed dated 05/05/2006 was indeed incorporated by way of the earlier amendment. It has also come on record that the aforesaid sale deed dated 05/05/2006 was executed during the pendency of the suit, which also would have an implication on the contentions that would be raised by the rival parties before the Trial Court on merits. It has also come on record that the defendants did not state in their written statement about the execution of the aforesaid sale deed during the pendency of the suit before the Trial Court. Therefore, it cannot be said that the proposed amendment/correction in the prayer clause sought by respondent No.1 could not be permitted on the ground that the aforesaid sale deed could not have been challenged as being barred by limitation. Since the aforesaid sale deed was itself not in existence when the suit was filed on 06/01/2006, there was no question of the challenge to the



aforesaid sale deed by way of amendment relating back to the date of filing of the original plaint/suit on 06/01/2006. In that view of the matter and particularly when respondent No.1 was able to demonstrate that pleadings pertaining to challenge to the said sale deed dated 05/05/2006 had already been placed on record by way of an earlier amendment, and that mentioning of the date of the sale deed was inadvertently left out, it cannot be said that the amendment/correction of the prayer clause could not have been permitted.

16. The only aspect that remains is, as to whether the petitioner could claim that unnecessary inconvenience was caused to him due to the repeated applications for amendment filed on behalf of respondent No.1. In this regard the Hon'ble Supreme Court held in the case of **Revajeetu Builders and Developers v. Narayanaswamy and sons and others** *supra* that the inconvenience caused to the rival party due to delay could be compensated with costs. A perusal of the impugned order of the Trial Court shows that while allowing the amendment, costs have been imposed on respondent No.1 to the extent of payment of Rs.5,000/- to each contesting defendants including the petitioner herein. Therefore, on this ground also no error can be found in the impugned order passed by the Trial Court.



17. In view of the above, this Court finds that no interference is required in the impugned order passed by the Trial Court. Accordingly, the writ petition is found to be without any merits and it is dismissed.

18. Considering the fact that the civil suit in the present case is pending since the year 2006, the Trial Court is directed to dispose of the suit expeditiously and in any case within a period of one year from today.

JUDGE