
(2017) 09 BOM CK 0196
In the Bombay High Court
Case No : 6761 of 2016

Chandrakant Rambhau Khachane, & Ors.

APPELLANT

Vs

Nandlal Govardhandas Chandak

RESPONDENT

Date of Decision : 13-09-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 6 Rule 17](#)

Citation : (2017) 09 BOM CK 0196

Hon'ble Judges : S.C. Gupte

Bench : SINGLE BENCH

Advocate : R.G. Kavimandan, Bhushan Mohta

Judgement

1. Heard learned counsel for the parties.
2. Rule. Taken up for hearing forthwith by consent of counsel.
3. The subject matter of challenge in the present petition is the rejection of an amendment application moved by the plaintiff at the appellate stage. The petitioners herein are legal heirs of the original plaintiff, since deceased, substituted in his place. The plaintiff's suit is for a perpetual injunction. He claims to be the owner of the suit property. It is his case that on the basis of an alleged sale deed dated 14th August, 1989, which was nominally executed by him, the defendant was trying to interfere with his peaceful possession and as a result, he was constrained to file the present suit seeking a perpetual injunction against the defendant. The suit was heard and dismissed by the trial Court. Being aggrieved, the plaintiff filed an appeal before the District Court at Buldhana. During the pendency of that appeal, the plaintiff moved the present application for amendment of the plaint, seeking a declaration that the sale deed dated 14th August, 1989 was nominal, sham and bogus and represented a money lending transaction and not a genuine sale in the eyes of law and hence, not binding upon the plaintiff. The District Court rejected that application. Hence the present writ petition.

4. The District Court rejected the application on two grounds. Firstly, it held that the issue of the sham and bogus nature of the transaction of sale was held by the trial Court against the plaintiff. The second ground was of delay.

5. All amendments which are necessary to bring out the real controversy between the parties to the suit are permissible. The amendment proposed in the present suit being prior to the introduction of the proviso to Order VI Rule 17 of the Code of Civil Procedure, the amendment could be allowed at any stage of the suit (the appeal being nothing but a continuation of the suit) unless it changes the nature of the appeal or the suit, as the case may be. In the present case, the very relief of perpetual injunction originally claimed in the suit was based on an alleged invalid sale transaction. The sale transaction was even originally termed as a nominal, sham and bogus and money lending transaction. What was implicit earlier in the relief claimed in the suit is now being sought to be made explicit. There is no reason why such amendment should not be allowed. The amendment does not change the nature of the suit or take away any substantive right accrued to the opponent in defending the suit. As long as the merits of the amendment are open to debate including the issue of limitation, the respondent need not have any apprehension of being prejudiced at the trial by reason of the amendment. In the premises, the impugned order of the District Court cannot be sustained.

6. Learned counsel for the respondent relies on the judgment of the Supreme Court in the case of *Revajeetu Builders and Developers V/s. Narayanaswamy & Sons & Ors.* reported in 2009(10) SCC 84. Relying on this judgment, it is submitted that the amendment sought by the plaintiff in the present case does not satisfy the principles laid down by the Supreme Court. In *Revajeetu Builders and Developers V/s. Narayanaswamy & Sons & Ors.* (supra), the Supreme Court, after analyzing English and Indian cases, laid down the following six basic principles, which ought to be taken into consideration whilst allowing or rejecting an amendment. These principles are as follows:

"(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."

7. The amendment application in the present case satisfies each of these six principles laid down by the Supreme Court. The amendment is necessary for a proper and effective adjudication of the case, since it explicitly brings out the real matter in controversy and allows the Court to decide the suit more effectively and so as to obviate any technical objection for noninclusion of a specific prayer for a declaration. There is nothing on record to suggest that the application was moved mala fide. The amendment, as particularly noted above, does not cause any prejudice to the respondent which cannot be compensated adequately in terms of money. In fact, refusing such amendment would lead to injustice and also may possibly lead to multiplicity of litigation. It cannot possibly be suggested that the amendment constitutionally or fundamentally changes the nature or character of the suit. Though as a general rule, the Court should decline an amendment to bring in a claim which is barred by limitation on the date of the amendment application, in an appropriate case it is always open to the Court to allow the amendment by keeping the issue of limitation open, to be decided in the trial. In the present case, considering the nature of the relief sought to be added, which was, as noted above, in the first place, implicit in the original relief claimed in the suit, this is one such case, where the amendment should have been allowed by keeping the issue of limitation open.

8. The District Court has, thus, committed a grave illegality in rejecting the amendment, whilst exercising jurisdiction under Order VI Rule 17 of the Code of Civil Procedure. Hence, Rule is made absolute by quashing and setting aside the impugned order dated 5th July, 2016 and allowing the amendment application of the petitioner herein (Exh. No.37). It is made clear that all rights and contentions of the parties on the merits of the amended plaint including the issue of limitation are kept open, to be decided in the pending civil appeal.