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**(2024) 03 BOM CK 0028**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 1608 Of 2021**

Hasinabi

APPELLANT

Vs

Mohammad Sharif And Others

RESPONDENT

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**Date of Decision :** 07-03-2024

**Acts Referred:**

**Citation :** (2024) 03 BOM CK 0028

**Hon'ble Judges :** B.P. Deshpande, J

**Bench :** Single Bench

**Advocate :** Atharva Manohar, Tejas Deshpande, K.R.Lule

**Final Decision :** Allowed

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## Judgement

B.P. Deshpande, J

1. Heard.
2. Rule. Rule is made returnable forthwith. The matter is taken up for final disposal with consent at the admission stage itself.
3. By way of present petition, the petitioner is challenging the impugned order dated 13/02/2020, passed by the First Appellate Court, thereby rejecting prayer for amendment of the written statement.
4. Mr.Manohar, learned counsel appearing for the petitioner, would submit that the amendment which is sought is only clarificatory in nature. He submits that the petitioner/defendant No.1 is illiterate pardanashin lady and therefore, she was unable to understand the pleadings in the written statement filed by her in the suit.
5. Mr.Manohar, learned counsel for the petitioner, would submit that suit was filed by the respondent No.1/plaintiff for declaration and possession of the suit plot, wherein the petitioner/defendant No.1 contested the matter. However, her specific defence raised regarding gift deed by which the suit property was gifted

to her by the plaintiff, is not accepted only because there are no proper pleadings in the written statement with regard to the description of stamp, the date of execution of gift deed, etc. He would submit that such findings are found in para-13 of the judgment of the Trial Court, which is challenged in an appeal filed before the District Court. He would further submit that even a challenge in the appeal is in connection with framing of issues improperly by the learned Trial Court.

6. Mr. Manohar, learned counsel for the petitioner, would submit that in order to do complete justice to the parties, it is necessary to amend the written statement, as the proposed amendment is not going to change the nature of the suit or the defence as well as will not in any manner cause prejudice to the respondent No.1/plaintiff. He submits that such proposed amendment is necessary only to incorporate the details of the gift deed.

7. Mr. Manohar, learned counsel for the petitioner, while placing reliance upon the case of Chakreshwari Construction Private Limited v. Manohar Lal, reported in (2017) 5 SCC 212, would submit that earlier decision of the Hon'ble Apex Court in the case of Revajeetu Builders and Developers v. Narayanaswamy & Sons, reported in (2009) 10 SCC 84, principles in para-63 of the said decision were laid down while considering the amendment application. He submits that the amendment proposed is imperative for proper and effective adjudication of the case and that such amendment is bona fide filed. Similarly, such amendment would not cause prejudice to the other side, which cannot be compensated adequately in terms of money. He would further submit that refusing such amendment would certainly lead to injustice to the petitioner.

8. Mr. Manohar, learned counsel for the petitioner, while placing reliance in the case of Egidio Braganza and another v. Lino Agnelo Fernandes and others, reported in 2016 SCC OnLine Bom 3962, wherein the learned Single Judge of this Court observed that when the nature of amendment is relevant for clarifying the matter in respect of which foundation is laid in the written statement, must receive more liberal consideration.

9. Per contra, Mr. Tejas Deshpande, learned counsel appearing for the respondent No.1/original plaintiff, would submit that the amendment is filed only to fill up the lacunae and to counter the findings of the learned Trial Court, which cannot be permitted at a belated stage. He would submit that the petitioner/defendant No.1 in her written statement nowhere claimed such details when in fact such details were known to her. There are no specific reasons disclosed as to why such details were not incorporated in the original written statement. He would therefore submit that reasons given in the amendment application are not genuine and thus rejection of such amendment cannot be interfered.

10. Mr. Deshpande, learned counsel for respondent No.1/plaintiff, while relying upon the decision in the case of Shivshankara & Anr. v. H.P. Vedavyasa Char, reported in 2023 LiveLaw (SC) 261, would submit that amendment at the

appellate stage could be allowed only in exceptional circumstances but not otherwise. He would submit that in the present matter there is absolutely no explanation and further the case of the petitioner cannot be considered as exceptional for allowing such amendment.

11. Rival contentions fall for determination.

12. It is an admitted fact that the petitioner and respondent No.1 are related. The respondent No.1 is the original plaintiff, whereas petitioner is the original defendant No.1. The parties are called as 'plaintiff and defendant' as arrayed in the plaint for the purpose of convenience.

13. The plaintiff filed a suit for declaration, perpetual injunction and possession against the defendant. The plaintiff claimed that he purchased the suit property vide sale deed dated 25/02/1994 and since then he is the owner in occupation of the suit property. The defendant/petitioner herein is admittedly the real sister of the plaintiff/respondent No.1. The defendant is residing in the same village along with her husband, wherein the suit property situates, whereas the plaintiff is residing in village Warud. The suit property is situated in village Raipur, Tahsil and District Buldhana.

14. It is further case of the plaintiff that somewhere in November 2011, defendant taking advantage of the confidence of the plaintiff and during his absence succeeded in inserting her name in the property register of Record of Rights qua the suit property by mutation entries, under the pretext of a false and concocted gift deed. The plaintiff claimed that no such gift deed was executed in favour of the defendant, however, she managed to record the mutation entries in her name by falsely representing that the plaintiff gifted this property to her. When the plaintiff obtained certified copies of the survey records, he realized about the mutation entries behind his back and therefore, he approached the Civil Court to declare such mutation entry as null and void and claimed possession from the original defendant No.1.

15. The defendant resisted the said suit by filing written statement, wherein she claimed that the suit property was purchased by her husband in the name of plaintiff and subsequently, it was agreed that the plaintiff would transfer the suit property in the name of defendant. When the plaintiff failed to transfer such property to the defendant, the matter was considered by the elders in the family members and thereafter it was referred to the Committee of the village for resolving the dispute. During such talks, a solution was suggested and accordingly, the plaintiff executed a gift deed in favour of the defendant. On the strength of such gift deed, the suit property was gifted to the defendant by the plaintiff and accordingly, the mutation entries were made.

16. The learned Trial Court after considering the relevant pleadings, framed various issues, which are found in internal page-6 of the Trial Court's decision dated 30/11/2013. Issue Nos.1 to 5 show that the burden is casted upon the defendant, whereas Issue Nos.6 and 7 are only on the plaintiff to prove. After

leading evidence, the learned Trial Court rejected the contention of the defendant regarding the gift and findings in para-13 qua Issue Nos.3 and 4 would go to show that such evidence was discarded only on the ground that there are no pleadings in the written statement. At this stage, it is necessary to note that Issue Nos.3 and 4 are with regard to the gift deed dated 21/09/2007 and the burden is on the defendant to prove that the gift deed was executed voluntarily and whether the said gift deed is valid document.

17. The defendant No.1 being aggrieved by such judgment passed in favour of plaintiff, preferred Regular Civil Appeal No.2 of 2014 before the District Court and one of the grounds raised therein is regarding framing of issues improperly.

18. During the pendency of said appeal, the petitioner/ defendant filed an application for amendment of the written statement. In the said amendment application, it is claimed that though in the written statement, the defendant has disclosed about the gift deed, however relevant details of the gift deed were not properly explained/pleaded. Thus, the defendant claimed that she be allowed to amend the written statement by incorporating proposed paras-19 to 23, which discloses the relevant details about the gift deed including the boundaries, area, etc. It further proposes to amend the written statement to incorporate fact that the plaintiff did not raise any pleadings or even prayer with regard to cancellation of gift deed being void on the ground that it was a fabricated document. It is also claimed in the proposed amendment that the defendant is illiterate and pardanashin lady and therefore, she was unable to understand the pleadings in the earlier written statement. She claimed that the proposed amendment remained to be incorporated due to a drafting error.

19. The learned First Appellate Court vide the impugned order dated 13/02/2020, though considered the relevant decisions cited by the parties, rejected such application on the ground that all the proposed amendment details were already known to the defendant and that the proposed amendment is not in the nature of subsequent development. The learned First Appellate Court further observed that there is nothing in the application, which would satisfy the Court as to why proposed amendment could not have been introduced earlier. Finally, the learned First Appellate Court observed in para-4 that the defendant failed to exercise due diligence while filing the written statement and therefore, such amendment at belated stage cannot be allowed.

20. It is well settled proposition of law that the amendments which are clarificatory in nature, not changing the nature of the claim or the relief and not having any effect or causing prejudice to the other side could be liberally allowed.

21. It is also well settled proposition of law that the amendment could be allowed even at the stage of second appeal if proper reasons are forthcoming and that such amendment is necessary for the just decision of the suit.

22. In the case of Revajeetu Builders (supra), Hon'ble Apex Court culled out principles in para-63 which read thus -

"13. The principle applicable for deciding the application made for amendment in the pleadings remains no more res integra and is laid down in several cases. In *Revajeetu Builders and Developers v. Narayanaswamy & Sons*, this Court after examining the entire previous case law on the subject culled out the following principle in para 63 of the judgment which reads as under: (SCC p.102)

63. On critically analyzing 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."

23. First of all, the Court is required to adjudicate whether the amendment sought is imperative for proper and effective adjudication of the case. The matter in hand would go to show that the defendant though sister of the plaintiff, she is illiterate and pardanashin lady and therefore, the written statement filed by her was not elaborate. However, the fact remains that she laid the foundation in the written statement by disclosing that the suit plot was purchased by her husband in the name of plaintiff with an understanding that the same shall be transferred in her name. While complying with such understanding, the plaintiff executed a gift deed in favour of defendant and accordingly, the mutation entries were carried out. Thus, it is clear from the pleadings in the original written statement about the stand taken by the defendant in connection with the gift deed. The proposed amendment is only to clarify the contents of the gift deed. No doubt, all these details were known to the defendant, however, the fact remains that she being illiterate and pardanashin lady, was unable to understand the intricacies of the pleadings and the requirement thereof.

24. Secondly, the Hon'ble Apex Court observed that the application for amendment needs to be bona fide filed and that there should not be any mala fide intention. The matter in hand would go to show that the proposed amendment is only to clarify the gift deed and there is no mala fide intention on the part of defendant which prima facie reveal to delay the proceedings or to distract the said proceedings.

25. Thirdly, the proposed amendment would not cause any prejudice to the plaintiff which cannot be compensated adequately in terms of money. Admittedly, the appeal is pending and therefore, it is clear that the defendant is challenging the findings of the Trial Court which referred to absence of pleadings of the gift deed. At the most, by imposing some costs, the plaintiff could be compensated while allowing the amendment application.

26. As against this, by refusing such amendment, it would in fact lead to injustice or to multiple litigation for the simple reason that the plaintiff though referred in the plaint about the gift deed, alleged that it was a false and fabricated document, without challenging it in the suit. Thus, on one hand, the plaintiff asked for declaration of the entries in the Revenue Records as null and void, conveniently avoid to challenge the gift deed as null and void. Thus, the gift deed remains without any declaration which could lead to multiplicity of litigation.

27. The fact remains that the proposed amendment is not changing the nature and the character of the defendant and thus, this aspect is also in favour of the defendant. Finally, the proposed amendment cannot be considered as barred by limitation as the defendant is not seeking any relief by incorporating such defence which is only by way of clarification to her earlier pleadings. It is no doubt true that such amendment has been filed at the appellate stage and therefore, if considered necessary, could be allowed by imposing some costs.

28. In Chakreshwari (supra), the Hon'ble Apex Court in para-16 observed that in appropriate cases the parties are permitted to amend their pleadings at any stage not only during the pendency of trial but also at the first and second appellate stage with leave of Court provided the amendment proposed is bona fide, relevant and necessary for deciding the rights of parties involved in the lis. Thus, the observations are applicable to the present matter.

29. In the case of Shivshankara (supra), the Hon'ble Apex Court has observed in para-14 that it is settled that while dealing with the prayers for amendment of the pleadings, the Court should not apply hyper technical approach, but at the same time, the Court must keep in mind that such amendment cannot be granted on a mere request specifically at the appellate stage and when the judgment and decree passed by the Court is in appeal. Only in exceptional circumstances and when the amendment is necessary to adjudicate the dispute effectively, could be allowed in rare circumstances.

30. The matter in hand would go to show that the petitioner/ defendant being illiterate and pardanashin lady was in fact unable to understand the pleadings in the written statement and therefore, in order to do justice effectively, the proposed amendment which is in the nature of clarification, ought to have been considered by the learned First Appellate Court. However, while taking hyper technical aspect and without considering the status of the defendant, such amendment was rejected.

31. To my mind, the impugned order suffers from improper exercise of

jurisdiction. No doubt, the proposed amendment/facts were to the knowledge of the defendant when she filed the written statement, that ground could have been considered qua the status of the defendant being illiterate and pardanashin lady. At the most, costs could have been imposed since the proposed amendment is not in a mala fide manner and certainly it is not causing any prejudice to the plaintiff

32. Having said so, the petition needs to be allowed.

33. Accordingly, the petition is allowed. The impugned order dated 13/02/2020 in Regular Civil Appeal No.2 of 2014 below Exhibit-15 is quashed and set aside. The application filed by the petitioner/defendant No.1 for amendment of the written statement stands allowed, subject to payment of costs of Rs.5,000/- (Rs.Five Thousand Only) to the plaintiff/respondent No.1.

34. Rule is made absolute in the above terms. No order as to costs.