

**(2015) 12 BOM CK 0019**

**In the Bombay High Court**

**Case No :** Writ Petition Nos. 2960, 2956, 2957, 2958 and 2959 of 2013

Khasagi (Private) Devi Ahilyabai Holkar Charitable Trust and Others APPELLANT

Vs

Audumbar Gangadhar Nikate and Others RESPONDENT

---

**Date of Decision :** 02-12-2015

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

**Citation :** (2016) 1 BomCR 534 : (2016) 2 MhLj 94

**Hon'ble Judges :** R.M. Savant, J.

**Bench :** Single Bench

**Advocate :** Vishwanath Talkute, for the Appellant; R.M. Haridas, for the Respondent

**Final Decision :** Partly Allowed

---

## Judgement

R.M. Savant, J.—Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The above Petitions take exception to the identical orders all dated 04.02.2013 passed by the Learned Joint Civil Judge, Junior Division, Pandharpur, by which order the applications filed by the Plaintiffs in each of the suits for amendment of the plaint in so far as the description of the suit property is concerned, came to be rejected.

The facts necessary to be cited for adjudication of the above Petitions can in brief be stated thus:--

3. The Petitioners in each of the above Petitions are the original Plaintiffs. The Petitioner is a Private Charitable Trust and the Petitioner Nos. 1 to 5 herein are the trustees of the said Trust. The Respondents in each of the above Petitions are the Defendants to the suits in question filed by the Petitioners and are their tenants. The said suits have been filed for possession of the suit premises on the ground of construction of permanent structure, for reasonable and bonafide

requirement of the Trust and for possession of the premises on the ground the same being dilapidated and for recovery of rent. In the said suits, the Defendants filed their identical written statement and in paragraph 2 thereof, it has been stated that the description of the suit premises is incomplete and skeletal and from the said description, it is not possible to identify the suit premises. It is further averred that the said description is not acceptable to the Defendants.

4. The said suits proceeded to trial on the basis of the issues which were framed, which were common to all the suits. In so far as the evidence is concerned, the evidence of the witness No. 1 of the Plaintiff is over in RCS Suit No. 76 of 2005 and the Defendants have adopted the cross-examination of the Plaintiff in the said suit in the other suits. It appears that in the cross-examination, questions were asked revolving around the description of the suit property. The trial was at the stage where the evidence of witness No. 2 of the Plaintiff is to be recorded. It is at the said stage that the applications for amendment of the plaint so as to give a proper description of the suit property came to be filed. The said applications were identical and it is stated in paragraph 1 of the said applications that to bring clarity in the description of the suit property, it is necessary to give better particulars and therefore the amendment is sought so as to clarify the description of the suit property. It is further stated that to remove the technical hitches if any and to see to it that there no room for ambiguity in the description of the suit property that the amendment has been sought. The said applications were replied to on behalf of the Defendants by their reply dated 28.01.2013. It was stated in the said reply that a right has accrued in favour of the Defendants in view of the description of the suit property as given in the plaint and if the amendment is allowed, the accrued right would be taken away. The Trial Court considered the said applications and has by the impugned order dated 04.02.2013 rejected the said applications. The gist of the reasoning of the Trial Court is that the trial having been commenced in each of the suits, the amendment could be allowed, only if the Plaintiffs explain the circumstances for filing the said applications at the said stage. It is further held by the Trial Court that in view of the cross-examination of the first witness of the Plaintiffs and admissions which have been given therein, a right has accrued to the Defendants and hence, if the application allowed, it would take away the effect of admissions. The Trial Court lastly held that having regard to the mandate of Order 6 Rule 17 of the CPC, the Plaintiff could not be permitted to amend the plaint at the said stage. As indicated above, it is the said orders dated 04.02.2013 passed in each of the applications that are taken exception to in each of the above Petitions.

5. Heard the Learned Counsel for the parties.

6. The Learned Counsel for the Petitioners Mr. V.S. Talkute would contend that by the amendment what is sought to be done is to give better description of the property so as not to leave scope for any technical flaw if ultimately the suit is decreed in favour of the Plaintiffs. The Learned Counsel by referring to the

application in RCS 74 of 2005 would contend that the amendment sought is only clarificatory in nature and would help the Court in adjudicating the suit completely and effectually. The Learned Counsel would contend that the Plaintiffs have accepted the position that they are the tenants of the suit property. However, they are making a grievance that the description of the suit premises is incomplete or there is a skeletal description from which it is difficult to identify the suit premises. The Learned Counsel in pursuit of the applications for amendment, sought to place reliance on the judgment of the Apex Court reported in (2005) 13 SCC 89 in the matter of Sajjan Kumar v. Ram Kishan. It was the submission of the Learned Counsel that in identical facts in the said case the Apex Court has held that the application for amendment at the belated stage in the description of the property can be allowed to avoid future complications.

7. Per contra, the Learned Counsel appearing for the Respondent/original Defendant Mr. R.M. Haridas would support the impugned order. It is the submission of the Learned Counsel that the applications filed by the Plaintiffs are bereft of any reasons as to why the amendment sought was at the said stage when the objection regarding description of the suit property was taken in the written statement in the year 2005 and thereafter evidence of the witness of the Plaintiff was recorded in the year 2010. The Learned Counsel would seek to sustain the impugned order on the ground that the Plaintiffs have not satisfied the due diligence test. In support of the contentions, the Learned Counsel sought to place reliance on the judgments of the Apex Court reported in J. Samuel and Others Vs. Gattu Mahesh and Others, , (2007) 14 SCC 129 in the matter of Shiv Gopal Sah alias Shiv Gopal Sahu v. Sita Ram Saraugi and others and the judgment of this Court reported in Sasa Detergent Division Shri Mahila Griha Udyog Lijjat Papad Vs. Shri Damodar S Mudliyar and Others, . It was the submission of the Learned Counsel that in the facts and circumstances of the case, the orders passed by the Trial Court rejecting the applications for amendment could not be found fault with.

8. Having heard the Learned Counsel for the parties, I have considered the rival contentions. The issue that arises for consideration is whether the Plaintiffs are entitled to be permitted to amend the plaint so as to give better particulars of the suit premises involved in each of the suits. In the said context, it is required to be noted that it is not the case of the Defendants that they are not the tenants of the Plaintiff Trust. The stand taken by the Defendants in each of the suits is that the description of the suit premises is incomplete and also skeletal and from the said description it is not possible to identify the suit premises. Hence, one fact that is required to be borne in mind is that the Defendants do not dispute that they are the tenants of the Plaintiffs Trust. They also do not outright reject the description of the suit property as given in the plaint in each of the suits. Their stand is that the said description is incomplete and also skeletal and from the said description, it is not possible to identify the suit property. In my view, it is in the said context that the application was required to be considered. It is also required to be noted that though the objection was raised in the written

statement in the year 2005, it is in the year 2010 that the Defendants put questions to the witness of the Plaintiffs revolving around the description of the property. It is at the said stage, therefore, the Plaintiffs realized that if the description as given in the plaint is continued, may be it would result in a technical difficulty for the Plaintiff in prosecution of the suit and in the event the suit is decreed, for execution of the decree.

9. In so far as proviso to Order 6 Rule 17 of the CPC is concerned, no doubt the said proviso postulates that the applicant seeking an amendment has to satisfy the due diligence test before he can be permitted to amend the pleadings. In the instant case, it is not as if that there is no description of the suit property or that the description is so defective that an objection is raised on the said ground. The objection taken to the description is on the ground that same is incomplete and skeletal and from the said description, it is not possible to identify the suit premises. Hence, it is not a case where the original description given in the plaint is sought to be taken away and replaced by a totally new description, but what is sought to be done is by maintaining the original description in the plaint, addition is sought to be made so as to give more clarity to the description. As indicated above, the alarm bells were rung when the Defendants in each of the suits put questions to the Plaintiffs' witness in the cross-examination revolving around the description of the suit property. It is also required to be noted that the suit is not at the stage where the situation is irreversible. As indicated above, only the evidence of the first witness of the Plaintiffs is complete and the suit was at the stage where the evidence of the second witness was to begun. At this stage, it would be gainful to refer to the judgment of the Apex Court in Sajjan Kumar's case (supra). In the said case, the Apex Court was concerned with almost identical facts as in the instant case. In the said case also, though an objection was raised to the description of the suit property as given in the written statement, the amendment to the description was moved long thereafter. The Apex Court held that though there was a delay in moving the amendment, the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the Plaintiff succeeding in the suit. In my view the aforesaid judgment in Sajjan Kumar's case (supra) applies on all fours to the case of the Plaintiff in the instant suits, as to avoid future complications and proceedings, it would be appropriate to allow the Plaintiff to amend the plaint at this stage.

10. Now, coming to the judgments cited on behalf of the Respondents in each of the above Petitions. In so far as the judgments of the Apex Court in J. Samuel's case (supra) and Shiv Gopal Sah's case (supra), the said judgments are revolving around the proviso to Order 6 Rule 17 of the CPC, wherein, in the said judgments the Apex Court has held that unless the due diligence test is satisfied, the applications would not even be considered by the concerned Court. In so far as the judgment of this Court in Sasa Detergent Division's case (supra) is concerned, the facts in the said case stand apart from the facts in the present

case, as in the said case the amendment to the pleadings were sought on the basis that the Plaintiff is dominus litis and entitled to amend the plaint and that Order 6 Rule 17 would not be an impediment for the Plaintiff to amend the plaint. In my view, in the facts of the instant case which have been narrated hereinabove at some length, the said judgments would not come in the way of the Plaintiff in seeking the amendment. The amendment if allowed would also result in avoidance of multiplicity of proceedings. However, since there is a delay in moving the application for amendment especially having regard to the fact that the cross-examination of the first witness of the Plaintiff was over in the year 2010 and the applications were moved in the year 2013, the Plaintiffs are required to be put to terms. Hence, the impugned orders all dated 04.02.2013 in each of the Petitions are required to be quashed and set aside and accordingly quashed and set aside. The Petitions are allowed to the said extent. In the facts and circumstances of the case, the Petitioners to pay costs of Rs. 3000/- to each of the Defendants in each of the suits. The same to be deposited in the Trial Court within four weeks from date. Amendment in the plaint to be carried out within six weeks from date on the Plaintiffs producing evidence of payment of costs as above. The Defendants in each of the suits would be entitled to withdraw the costs. The Petitions are allowed to the aforesaid extent. Rule is accordingly made absolute, with parties to bear their respective costs of the Petitions.