

Gera Developments Pvt Ltd Through Its Ceo Mr Gulzar Malhotra Vs Sangita Shivaji Kate

Court: Bombay High Court

Date of Decision: Jan. 21, 2025

Acts Referred: Code of Civil Procedure, 1908 " Order 1 Rule 10, Order 6 Rule 17

Hon'ble Judges: Amit Borkar, J

Bench: Single Bench

Advocate: Nikhil Sakhardande, Pralhad Paranjape, Shubhra Swami, Yash Tembe, Rahul Punjabi, Girish Godbole, Bhushan Deshmukh, Nanki G, Manasi Goglekar, Krisha Thakkar, Wadia Ghandy & Co. Amit Gharte, Rajaram V. Bansode, Sheetal M. Ubale

Final Decision: Dismissed

Judgement

Amit Borkar, J

1. Since the order challenged in both writ petitions arises from the same cause of action and involves similar issues, they are being disposed of by this

common judgment.

2. The petitioner in Writ Petition No. 10225 of 2024 is the original defendant No. 66, whereas the petitioners in Writ Petition No. 10422 of 2024 are

defendants Nos. 16 and 17 in the suit. The challenge in both the petitions is to the order dated 10 July 2024 passed by the Civil Judge, Senior Division,

Pune. The impugned order allows an application under Order VI Rule 17 of the Civil Procedure Code, 1908, to incorporate averments regarding the

creation of lease rights by the defendants, a prayer for a declaration that the lease agreements executed in favor of the newly added defendants are

not binding on the plaintiff's share in the suit property and permits impleadment of the lessees as defendants.

3. In December 2021, respondent No.1-original plaintiff filed Special Civil Suit No. 2040 of 2021 for partition and separate possession, cancellation of

sale deeds, and a declaration that the sale deeds executed by defendant Nos. 1, 2, and 5 to 14 are not binding on the plaintiff's share. The plaintiff

also sought a declaration that an agreement to sell executed by defendant Nos. 1, 2, and 5 to 14 in favor of defendant No. 67 is not binding on the

plaintiff's share. Additionally, the plaintiff sought an injunction restraining the defendants from disturbing the plaintiff's possession over the suit

property and from creating third-party rights. The properties in question are described in paragraph No.1 of the plaint.

4. According to the plaintiff, the suit lands are ancestral properties that remain undivided, and the plaintiff asserts an undivided common share in all the

properties. The plaintiff contends that defendant Nos. 1 to 15 have alienated parts of the suit properties through sale deeds and agreements, which the

plaintiff claims are not binding on the plaintiff's undivided share. It is further asserted that the plaintiff has a 1/5th undivided share in the suit

property, which is protected under the law governing co-parcenary rights in joint family properties.

5. The plaintiff filed an application for amendment under Order VI Rule 17 of the Civil Procedure Code, 1908 (hereinafter referred to as "Code"),

seeking to include additional averments that defendant No. 16, after purchasing a portion of the suit property admeasuring 2H 15.6R, illegally

consolidated the land to extend it to 10H 44R. It is alleged that defendant No. 66 has constructed buildings on the consolidated property and executed

various agreements, including lease agreements, in favor of defendant No. 68. The plaintiff further contends that the lease agreement executed in

relation to the buildings constructed on Survey No. 65 is illegal and not binding on the plaintiff's share.

6. The plaintiff has also sought to amend the prayer clause of the plaint to incorporate a challenge to the lease deeds executed by defendant No. 66 in

favour of defendant Nos. 68 to 79, seeking a declaration that these sale deeds are illegal and not binding on the plaintiff's share. Additionally, the

plaintiff has prayed for the inclusion of defendant Nos. 68 to 79 as parties to the suit, invoking the principle that all necessary parties whose interests

are likely to be affected by the adjudication must be impleaded to avoid multiplicity of proceedings.

7. The petitioners opposed the application, contending that the proposed amendment is not necessary for the determination of the real controversy

between the parties, as mandated by Order VI Rule 17 of the Code. They contended that the proposed defendants are neither necessary nor proper

parties under Order I Rule 10 of the Code. It was further contended that the proposed amendment does not pertain to any subsequent development in

the suit but seeks to alter the original nature and scope of the litigation. The petitioners emphasized that the proposed defendants have no title or

interest in the suit property and are merely occupants of structures whose presence is irrelevant to the adjudication of a partition suit. Additionally, the

composite application seeking relief under Order I Rule 10 and Order VI Rule 17 was challenged as not maintainable.

8. The learned Trial Court, by its impugned judgment and order dated 10 July 2024, allowed the application, holding that the proposed amendment and

addition of parties were necessary for a comprehensive adjudication of the dispute. The petitioners have, therefore, challenged this order by filing the

present writ petitions.

9. Mr. Sakhardande, learned Senior Advocate, and Mr. Godbole, learned Senior Advocate, appearing on behalf of the petitioners in the respective writ

petitions, contended that a conjoint application under Order I Rule 10 and Order VI Rule 17 of the Code is procedurally flawed and has caused

prejudice to the petitioners. They argued that the proposed amendment alters the nature of the suit, as it seeks a declaration regarding the agreement

to lease executed in favor of the newly added defendants, which is beyond the scope of the original suit for partition and separate possession. The

learned counsel submitted that lessees are neither necessary nor proper parties in a partition suit, as the subject matter of the suit pertains solely to the

lands and not to the structures constructed over them. They further argued that unless the plaintiff establishes her ownership over the buildings, she

cannot claim any relief concerning the lessees or agreements executed in relation to the structures.

10. In support of their submissions, the learned counsel relied on the judgment in Asian Hotels (North) Limited vs. Alok Kumar Lodha and Others,

(2022) 8 SCC 145, emphasizing that the principle of dominus litis does not grant the original plaintiff unrestricted discretion to implead any party as a

defendant.

11. Relying on the judgment in the case of Basavraj vs. Indira and Others, (2024) 3 SCC 705, it is submitted that while dealing with an application

under Order VI Rule 17 of the Code, particularly in a partition suit, the proposed amendment to incorporate a challenge to the lease deed

fundamentally alters the nature and scope of the suit.

12. Relying on the judgment in the case of Gurmit Singh Bhatia vs. Kiran Kant Robinson and Others, 2019 SCC OnLine SC 91, it is contended

that the newly added defendants are neither necessary nor proper parties within the meaning of Order I Rule 10 of the Code.

13. Further reliance is placed on the judgment of a Single Judge of this Court in Damodhardas Govindprasad Sangi vs. Fatehsinh, through L.Rs.

and Others, 2022 SCC OnLine Bom 6724, where it was held that it is not permissible for the plaintiff to introduce an altogether new prayer through

an amendment, especially when such a prayer alters the fundamental nature of the suit.

14. Relying on the judgment of this Court in Dinkar S. Vaidya vs. Ganpat S. Gore and Others, 1980 SCC OnLine Bom 137, it is contended that

under Indian law, the concept of dual ownership has been recognized, wherein the land and the structures constructed upon it are treated as distinct

premises with distinct ownership vested in separate persons.

15. Having heard the learned Senior Advocates for the petitioners and upon perusal of the record, it is evident that the proposed defendants are

lessees of the structures constructed over the suit property 1-E. It is also undisputed that the application for amendment was filed before the

commencement of the trial. Consequently, the proviso to Order VI Rule 17 of the Code, which requires the plaintiff to plead and prove due diligence

for seeking amendments after the commencement of trial, is not attracted in the present case. The plaintiff, by way of the amendment, seeks to

incorporate relevant pleadings in respect of the agreement of lease executed by the defendants in favor of the newly added defendants. Furthermore,

the plaintiff has sought a declaratory relief that the agreements to lease executed in favor of the proposed defendants are illegal and not binding on the

plaintiff's share. In addition, the plaintiff has sought to amend the description of the suit property to include the buildings constructed on

consolidated plots forming part of the suit property 1-E. Such amendments appear to be aimed at bringing the entirety of the dispute under the purview

of the suit to avoid piecemeal adjudication and multiplicity of proceedings.

16. The suit, therefore, continues to primarily remain a suit for partition, declaration, and injunction. The only pleadings added by way of the application

for amendment pertain to averments regarding the creation of leasehold rights in favor of the newly added defendants and a declaration concerning

the lease deeds executed in respect of properties in the constructed building over the suit property 1-E. While the petitioners contend that these

amendments alter the nature of the suit, the amendments seem to primarily amplify the original cause of action by including subsequent developments

related to the subject matter of the suit. This is consistent with the principle that amendments should be allowed if they assist in resolving the real

issues between the parties and do not cause irreparable prejudice to the opposing side.

17. The parameters for allowing an application for amendment have been laid down by the Supreme Court in the recent judgment of Life Insurance

Corporation of India vs. Sanjeev Builders Private Limited & Anr., 2022 LiveLaw (SC) 72.9 The Supreme Court reiterated the following

principles:

i. Amendments should ordinarily be allowed unless they cause injustice or prejudice to the other side that cannot be compensated in terms of costs.

ii. The purpose of allowing amendments is to minimize litigation and ensure that all issues between the parties are decided in the same proceedings.

iii. Amendments that introduce a new cause of action or change the fundamental character of the suit should generally not be permitted, except when

they are necessary to resolve the real controversy between the parties.

iv. The bona fides of the party seeking the amendment and the stage at which the amendment is sought are relevant considerations.

v. Amendments should not cause undue delay or take the other side by surprise.

18. In the present case, the application for amendment appears to conform to these principles, as it seeks to address the real controversy without

fundamentally altering the character of the suit or causing prejudice to the defendants.

19. There can be no dispute about the well-settled proposition of law that an amendment which changes the fundamental nature of the suit or

introduces a new cause of action, particularly one that is time-barred, cannot ordinarily be allowed. However, in the facts of the present case, the

original suit for partition pertains to various parcels of land. The proposed amendment seeks to incorporate averments regarding the creation of lease

rights in respect of premises situated within a building constructed on suit property 1-E. In my opinion, the proposed amendment is necessary for the

effective and proper adjudication of the controversy involved between the parties, as it directly pertains to the property in dispute and the claims made

therein. Moreover, it is aimed at avoiding multiplicity of proceedings by addressing all related issues in one suit. The proposed amendment does not

cause any injustice to the petitioners, as they have neither alleged malafides on the part of the plaintiff nor shown how the amendment would deprive

them of a valid defense.

20. It is well established that courts should adopt a liberal approach while dealing with applications for amendment. An amendment that facilitates the

resolution of the real controversy, does not introduce a time-barred claim, and does not prejudice the opposing party beyond monetary compensation,

should ordinarily be allowed. In the present case, since the suit continues to be one for partition, declaration, and injunction, the proposed amendment

neither changes its fundamental nature nor introduces an entirely new cause of action. It cannot be said that the amendment sets up an entirely new

case, nor does it divest the opposite party of any advantage secured through admissions or pleadings. Thus, the proposed amendment satisfies the

parameters laid down by the Supreme Court in Life Insurance Corporation of India (Supra).

21. As regards the petitioners' contention that a composite application seeking relief analogous to Order I Rule 10 and Order VI Rule 17 of the

Code is not maintainable, I find no merit in this argument. The relief sought to be added by the amendment pertains to the validity of lease deeds

executed in favor of various lessees. Since these lessees are directly affected by the declaration sought in the plaint, their joinder as defendants is

essential. Order I Rule 10(2) of the Code allows the addition of parties whose presence is necessary for a complete and effective adjudication of the

dispute. As reiterated in Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited, (2010) 7

SCC 417, the test for determining whether a party is necessary or proper is whether their presence is essential to avoid multiplicity of litigation and to

grant effective relief.

22. The petitioners have failed to demonstrate any legal prejudice caused to them by the composite application filed by the plaintiff. The joinder of

lessees is intrinsically linked to the declaration sought concerning the validity of the lease deeds. Without their presence, the relief sought by the

plaintiff cannot be effectively adjudicated, as the lessees are directly interested in defending the validity of their lease agreements. In such

circumstances, their addition as parties to the suit is not only permissible but also necessary for the comprehensive resolution of the dispute. The

contention of the petitioners that the proposed defendants are neither necessary nor proper parties, therefore, stands untenable.

23. As regards the contention raised by the petitioners relying on the judgment in Dinkar S. Vaidya (Supra), regarding the concept of dual ownership, it

is pertinent to note that the principle of dual ownership, as recognized in Indian law, establishes that the ownership of land and the structures built upon

it may vest in separate individuals. This court in Dinkar S. Vaidya emphasized that land and buildings can constitute distinct premises, and rights over

one do not necessarily imply rights over the other unless explicitly claimed and established. In the present case, while the plaintiff has sought partition

of the suit property 1-E, the proposed amendment pertains to lease rights in respect of structures constructed on the said property. Whether the

plaintiff has a valid claim of ownership over the structures, or whether such structures constitute distinct premises under the concept of dual

ownership, is a matter that requires adjudication during the trial. The Court, at the stage of considering an application for amendment, is not required to

delve into the merits of these claims. Such issues of ownership, and the rights of lessees or other stakeholders, must be determined based on evidence

and legal arguments presented during the trial. It is also necessary to consider that if the plaintiff's suit for partition succeeds and the plaintiff is

allotted suit property 1-E in the final decree, the presence of the newly added defendants (lessees) will be essential for passing an effective and

enforceable decree. Their presence will enable the Court to address all claims and counterclaims concerning lease rights over the structures on the

property. The lessees' participation in the proceedings ensures that their rights and obligations concerning the property are appropriately considered.

Their involvement also serves to safeguard their interests, enabling them to make submissions regarding the proper allotment of shares to the

successful parties.

24. The Supreme Court in *Asian Hotels* (Supra) emphasized that while a plaintiff has the discretion to choose the parties to be impleaded in a suit

under the principle of *dominus litis*, this discretion is not absolute and is subject to judicial scrutiny. The test to determine whether a party is necessary

or proper, as laid down in *Asian Hotels*, is whether the party's presence is indispensable for an effective and complete adjudication of the issues

involved. Applying this principle to the present case, the newly added defendants, who are lessees under the impugned agreements, are directly

affected by the declaratory relief sought by the plaintiff regarding the validity of those lease agreements. Their addition ensures that the Court can

adjudicate upon the entire controversy comprehensively and pass binding and enforceable decrees without leaving any scope for future disputes.

Therefore, the Trial Court's decision to allow their addition as defendants is consistent with the parameters set out in *Asian Hotels*.

25. The petitioners have argued that the proposed amendment and joinder of parties are unnecessary since the suit primarily pertains to partition.

However, as clarified in *Asian Hotels* (Supra), the joinder of parties whose presence is necessary to adjudicate the reliefs sought "particularly

declarations affecting their legal rights "cannot be said to be redundant or irrelevant. The lessees' involvement is indispensable to determine the

validity of the lease agreements and their impact on the plaintiff's claims over the suit property.

26. The Supreme Court in *Basavraj* (Supra) emphasized that the primary consideration while deciding an application under Order VI Rule 17 of the

Code, is whether the proposed amendment is necessary for resolving the real controversy between the parties and whether it avoids multiplicity of

proceedings. The judgment clarified that the merits of the claims sought to be introduced should not be adjudicated at the stage of allowing the

amendment. Applying the principles of *Basavraj*, it is evident that the plaintiff's proposed amendment seeks to bring within the ambit of the suit the

question of the validity of lease deeds executed in favor of the newly added defendants. These lease deeds pertain to structures constructed on the

suit property 1-E, which is already part of the subject matter of the partition suit. The amendment does not introduce a new cause of action but rather

supplements the existing claims by addressing transactions directly related to the suit property. This approach aligns with the Supreme Court's

observation in *Basavraj* that amendments aimed at avoiding piecemeal litigation and resolving all disputes comprehensively within the same suit should

be liberally allowed. The petitioners' argument that the amendment alters the nature of the suit or introduces a new cause of action is also

untenable in light of *Basavraj*. The suit remains a partition suit, and the additional reliefs sought regarding the lease deeds and the inclusion of lessees

as defendants are ancillary to the primary relief of partition and declaration.

27. In *Gurmit Singh Bhatia* (Supra), the Supreme Court emphasized that the Court, while exercising its discretion under Order I Rule 10 of the Code,

must ascertain whether the party sought to be added has a direct interest in the controversy and whether their inclusion is necessary for a complete

and effective adjudication of the matter. In the present case, the plaintiff has sought to implead the lessees of the structures constructed on suit

property 1-E and has challenged the validity of lease agreements executed in their favor. These lessees have a direct and substantial interest in the

reliefs sought by the plaintiff, particularly the declaratory relief concerning the lease agreements. Their joinder as defendants is necessary to ensure

that the controversy can be resolved comprehensively and to avoid multiplicity of proceedings. The proposed amendment does not alter the

fundamental nature of the suit, which remains one for partition, declaration, and injunction. Instead, it seeks to address ancillary issues that are directly

connected to the partition and allocation of the suit property.

28. This Court, in *D. Amardhas, Govindprasad, Sangi*, (Supra) emphasized that amendments seeking to introduce new prayers that

substantially alter the nature of the suit or set up an entirely new cause of action are impermissible. However, it also recognized that amendments

aimed at clarifying or expanding existing claims, without fundamentally changing the character of the suit, should be allowed if they aid in the effective

adjudication of the real controversy. In the present case, the original suit for partition is directed toward the division of various parcels of land,

including suit property 1-E. The proposed amendment does not introduce an entirely new claim but seeks to address the implications of lease

agreements executed concerning structures constructed on the suit property. Here, the plaintiff's challenge to the lease deeds and inclusion of the

lessees as defendants are inherently connected to the partition suit, as they pertain to the allocation and possession of the property in dispute. The

proposed amendment does not alter the fundamental character of the suit, which remains one for partition, declaration, and injunction. Instead, it seeks

to incorporate ancillary claims that are directly connected to the main dispute. The inclusion of lessees as defendants ensures that their interests are

considered in the adjudication process, thereby avoiding the possibility of future litigation on related issues.

29. In view of the above discussion, it is evident that the Trial Court's decision to allow the application for amendment is consistent with the

established legal principles. The addition of parties and the incorporation of related pleadings are necessary for a complete and effective adjudication

of the issues raised in the suit. The petitioners have not demonstrated any substantive prejudice that would result from the amendment, nor have they

established that the amendment is malafide or vexatious. Accordingly, there is no jurisdictional error or legal infirmity in the impugned order.

30. The writ petitions are, therefore, dismissed.

31. At this stage, the learned Senior Advocates for the petitioners request continuation of the ad-interim relief previously granted by this Court.

Considering the nature of the issues involved and to ensure that the petitioners' rights are not irretrievably prejudiced pending further proceedings, the

ad-interim relief granted by this Court is continued for a period of six weeks from today.