



Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**WRIT PETITION NO. 2848 OF 2024-F.**

1. Mr. Anil alias Audhut B. Dhepe (since deceased) Major in age, 64 years, Son of Mr. Bhagwant Dattatraya Dhepe, Indian National and residing at 3rd Floor, Dattaprasad Building, Opposite Government Printing Press, M. G. Road, Panaji, Goa.
  2. Mrs. Radhika Prabhudessai, Daughter of late Anil alias Audhut B. Dhepe, Major of age, Indian National & her husband,
  3. Mr. Ritesh Prabhudessai, Son of Shri Maruti Prabhudessai, Major of age, Indian National,
  4. Mrs. Ankita Ghatkar, Daughter of late Mr. Anil alias Audhut B. Dhepe, Major of age, Indian National and her husband,
  5. Mr. Rohan Ghatkar, Son of Shri Anil Ghatkar, major of age, Indian National  
All above residents of 3rd floor, Dattaprasad building, Opposite Government Printing Press, M. G. Road, Panaji, Goa.
  6. Mrs. Meena A. Dhepe, Major in age, 57 years, Wife of Mr. Anil alias Audhut B. Dhepe, Indian National and residing at 3rd floor, Dattaprasad Building, Opposite Government Printing Press, M.G. Road, Panaji, Goa.
- ... Petitioners.

*Versus*

1. Mrs. Pratibha Pandurang Dhepe, Major in age, widow of Mr. Pandurang Dhepe, Indian National and residing at 3A, Hideway Apartments, Street 4, Kakatiya Nagar, Habzigoda, Hyderabad.
2. Mr. Nitin Pandurang Dhepe, son of Mr. Pandurang Dhepe, Major in age, Indian National and residing at 3A, Hideway Apartments, Street 4, Kakatiya Nagar, Habzigoda, Hyderabad.
3. Mrs. Nirmala Nitin Dhepe, wife of Mr. Nitin Pandurang Dhepe, Major in age, Indian National and residing at 3A, Hideway Apartments, Street 4, Kakatiya Nagar, Habzigoda, Hyderabad.
4. Mr. Kiran Balkrishna Sakhardande (deceased) Son of Mr. Balkrishna Sakhardande, Major in age, Indian National, residing at Mangal Murti, 1st Floor, Ganesh Wadi, Panchakhadi, Thane, Maharashtra.
5. Mr. Ameya Sakhardande, Son of late Mr. Kiran Sakhardande, Major of age, Indian National.
6. Mrs. Sayali Sakhardande alias Nila Sakhardande, Daughter of Late Mr. Kiran Sakhardande, Major of age, Indian National and her husband,

7. Mr. Rohit Chatta, Son-in-law of late Mr. Kiran Sakhardande, Major of age, Indian National, All above residents of Mangal Murti, 1st Floor, Ganesh Wadi, Panchakhadi, Thane, Maharashtra.
8. Mrs. Nilima Kiran Sakhardande, wife of Mr. Kiran Balkrishna Sakhardande, Major in age, Indian National, residing at Mangal Murti, 1st Floor, Ganesh Wadi, Panchakhadi, Thane, Maharashtra.
9. Mr. Vishwas Vinayak Vakatkar, Son of Vinayak Vakatkar, Major in age, Indian National, residing at Nishank Mira, Flat no.4, Talmiki Road, St. Cruz (West), Mumbai, Maharashtra.
10. Mrs. Madhuri Vishwas Vakatkar, Major in age, wife of Mr. Vishwas Vinayak Vakatkar Indian National, residing at Nishank Mira, Flat no.4, Talmiki Road, St. Cruz (West), Mumbai, Maharashtra.
11. Mrs. Bernice Mohan Nayak, Wife of Mr. Mohan Nayak Major in age, residing at La Citadel Colony, Dona Paula, Ilhas Goa.
12. Mr. Mohan Nayak, Husband of Mrs. Bernice Mohan Nayak Major in age, residing at La Citadel Colony, Dona Paula, Ilhas Goa.
13. The Sub-Registrar of Ilhas, Having office at Ground Floor,

Junta House, 18th June Road,  
Panaji Goa.

14. The State of Goa, Through Chief  
Secretary, Secretariate, Porvorim,  
Bardez Goa. ... Respondents.

Mr. S. S. Kantak, Senior Advocate long with Mr V. A. Lawande, Mr  
Preetam Talaulikar, Mr Parimal Redkar, Mr Aniket Kunde, Ms. Neha  
Kholkar and Ms. Saicha Desai, Advocates for the Petitioners.

Ms. A. Agni, Senior Advocate along with Ms. Afrin Harrihar, Advocate  
and Mr Vasudev Salkar, Advocate for the Respondents

**CORAM: NIVEDITA P. MEHTA, J.**

**Reserved on : 31<sup>st</sup> JANUARY 2025.**

**Pronounced on: 7<sup>th</sup> FEBRUARY 2025.**

**JUDGMENT:**

1. Rule. Rule is made returnable forthwith with the consent and at the request of the learned counsel for the parties.
2. The learned Ad-hoc District Judge, (FTC-1), Panaji, Goa I/C of DJ-3 Panaji, Goa (*"the learned trial Court" hereinafter*) has vide impugned order dated 23.10.2024; passed in Civil Suit no. 36/2013 (Mr. Anil alias Audhut B. Dhepe and others Vs. Mrs. Pratibha Pandurang Dhepe and others) dismissed the application filed by the plaintiffs, (*hereinafter referred to as the petitioners*), under Order VI Rule 17 of the Code of Civil Procedure (CPC) seeking to amend the prayer clause (b) as under:

a) after the words deed of sale, “dated 28-08-2013 executed before the Sub Registrar of Illhas”.

b) After the words null & void, “and consequently direct Defendant no 1 to 7 (hereinafter referred to as Respondents) to execute the sale deed in respect of their undivided rights, share and interest in the suit property to the Plaintiffs for an amount of Rs 48,00,000/- (Rupees Forty Lacs only).”

### Facts

3. The petitioners, as plaintiffs, have filed the application under Order VI Rule 17 of CPC to amend the plaint against Respondents No. 1 to 7, as Defendants no.1 to 7 therein (*hereinafter referred to as the respondents*). The issue in controversy is the rejection of the petitioners’ application for amendment of the prayer clause (b). Therefore, it is necessary to know exactly, at the outset, the case set up by the petitioners, as plaintiffs.

### Averments in the Plaint

4. The petitioners have filed a suit for declaration, specific performance and injunction. The petitioners no. 1 and 2 and the respondents no.2 to 7 are cousins/co-owners. There exists a piece of land admeasuring 662 sq.mts. with a multi-storied building standing thereon, situated at Panaji Goa, which is surveyed under chalta no. 167 to 172 of P.T. Sheet no.42 of City Survey Panaji. The first floor of this multi-storied building has been sold by petitioners and respondent

nos.1 to 3 and Mr. Pandurang Dhepe in favour of Bank of Maharashtra vide Deed of Sale dated 30.8.2001. Except the first floor; the remaining multi-storied building alongwith the piece of land shall be hereinafter referred to as “suit property”. The suit property originally belonged to the ancestors of petitioners and respondents. Inventory Proceedings no.4/2000/A were filed before the Civil Judge, Senior Division at Panaji. The learned Civil Judge, Senior Division at Panaji vide order dated 3.05.200, allotted the half undivided share of the suit property to the petitioners, 1/3rd undivided share in the suit property to respondent no.1 and her late husband Mr. Pandurang Dhepe, 1/6th undivided share to respondents no.2 and 3. On the demise of Mr. Pandurang Dhepe the undivided right/share of the suit property devolved upon respondents no.2 to 7. The petitioners and respondents no. 1 to 7 are the co-owners of the aforesaid suit property.

*5. As per Article 1566 of the Portuguese Civil Code, if any co-owners decide to sell their share, the first right of purchase is of the co-owners. Articles 1566 and 1567 of the Code are reproduced below: -*

*Article 1566 —Right of preference of co-owners—Co-owners of a thing which cannot be partitioned or has not been partitioned may not sell their respective share to third parties if another co-owner is willing to acquire the same for the same price.*

*§ 1. The co-owner who is not notified of the sale may acquire for himself the share sold to third parties, provided he sues for the same within a period of 6 months from the date on which he comes to know of the sale; before*

*taking delivery, the said co-owner shall deposit the price which, according to the terms of the contract, has been paid or has become due.*

*§ 2. In case there is more than one co-owner, the provisions of §§ 4 & 5 of Article 2309 shall be observed; but if the shares are not equal and the partner of the larger share desires to exercise his right of pre-emption, he shall be given first preference without any auction.*

*§ 3. The right of pre-emption in any of the cases shall not be prejudiced by the cancellation of the contract whether done extra judicially or by admission in Court or through compromise in judicial proceedings.*

*§ 4. The time limit referred to in sub clause (1) of this article is applicable to all other cases of pre-emption.*

**Article 1567** --- ***Alienation in violation of right of preference*** - *Contracts of purchase and sale whether made directly or through an intermediary in violation of the provisions contained in the preceeding articles shall be without any effect.*

*§ Sole: A sale or purchase shall be deemed to have been made through an intermediary :-*

*(1) When it is done through the spouse of the person who is not entitled to sell or If the person who is not entitled to sell is a presumed heir of the intermediary.*

*(2) When the person who is not entitled to sell and the intermediary or third party agree that the thing sold shall be eventually transferred to the said person who is disentitled to sell.*

6. On 14.2.2013, respondents no.2 and 3 informed the petitioners that they had decided to sell their undivided rights in the suit property for Rs.45 lakhs. The petitioners conveyed their willingness to purchase

the said share but requested six months to arrange for the consideration. The petitioners received a legal notice dated 13.8.2013 from respondents no. 1 to 3 stating therein that they have another offer for a higher amount of Rs.48 lakhs from respondent no.8 and called upon the petitioners to exercise their rights of pre-emption. The petitioners accepted the offer of Rs. 48 lakhs by their reply dated 21.8.2013.

7. The petitioners submit that despite agreeing to purchase the undivided rights of respondents no.1 to 7 on 28.8.2013, respondents no.1 to 7 in complete defiance executed a sale deed in favour of respondent no. 8 in respect of the suit property for Rs.48 lakhs.

8. Being aggrieved by the execution of the sale deed in favour of respondent no.8 by respondents no. 1 to 7, the petitioners have filed a suit against the respondents.

#### Contentions of the respondents in Written-Statement

9. The respondents filed their response stating therein that the petitioners are the co-owners of the suit property. Respondents no.2 and 3 denied that on 14.2.2013 they offered to sell their share of the suit property to the petitioners for an amount of Rs.45 lakhs. The respondents pleaded that respondent no.8 had approached respondents no.1 to 7 with the proposal to buy their share of the suit property for a sum of Rs.48 lakhs. They, however, admitted that



respondents no. 1 to 3 had sent a notice through their Advocate Shri R. S. Bodke stating that respondent no.8 had offered to purchase an undivided share of respondents no. 1 to 7 for an amount of Rs.48 lakhs and the notice was duly received by the petitioners on 13.8.2013. The respondents no. 1 to 3 received a reply from petitioners no. 1 and 2 stating therein that they are exercising their right of pre-emption and are willing to purchase 50% of the undivided share of the suit property from respondents no. 1 to 3 for a sum of Rs. 48 lakhs. Respondents no. 1 to 3 categorically stated that the petitioners did not have the resources to pay Rs.48 lakhs. Therefore, respondent no.2 contacted the petitioners and enquired as to whether they were aware of the reply dated 19.8.2013 and whether they were ready to purchase the suit property for a sum of Rs. 48 lakhs. In response, the petitioners stated that they had no knowledge about the reply dated 19.8.2013 nor had instructed Advocate Sambari or any other person to send a reply on their behalf. The petitioners told the respondents no. 1 to 3 that they did not have Rs.48 lakhs to pay for the undivided share of the suit property and the respondents can go ahead with the sale of the suit property. Therefore, respondents no.1 to 7 executed the sale deed dated 28.8.2013 and sold their undivided share in the suit property to respondent no.8. The transaction is complete as respondents no. 1 to 7 have received their consideration amount. The sale deed is pending registration as a No Objection Certificate from North Goa Planning and

Development Authority has not been received. The respondents in the said circumstances claimed that the petitioners do not have any right of pre-emption.

**10.** The respondents no.8 and 9 have denied in their written statement stating that the respondents no. 1 to 3 had never agreed to sell their share in the suit property to the petitioners for Rs.45 lakhs by oral contract. It is their contention that the respondents nos. 1 to 7 have already executed a sale deed dated 28.8.2013 selling their share in the suit property to them and the petitioners do not have any right to pre-emption.

#### Stage of the Suit

**11.** Evidence in the matter of both parties was concluded on 26.9.2024 and the matter was posted for final arguments on 1.10.2024. On 1.10.2024, the petitioners filed an application under Order VI Rule 17 of CPC for amendment of the plaint, more specifically for amendment of the prayer clause (b), simpliciter without seeking any other amendment.

#### Application under Order VI Rule 17 of CPC

**12.** The petitioners sought amendment under Order VI Rule 17 of CPC stating therein that the petitioners were in the process of preparing themselves for the final arguments in the matter as the evidence of the respondents was closed. It was during that time that

the petitioners realized the error in formulating the reliefs. The petitioners further stated that the amendment sought in the plaint did not change the nature of the suit. The right in the suit property was transferred by respondents no.1 to 7 to respondents no.8 and 9 without permitting the petitioners to exercise their pre-emptive rights even when they were willing. It is an admitted fact that the sale deed was executed by respondents no.1 to 7 and therefore dismissing the application for amendment of plaint would cause grave prejudice to the rights of the petitioners. The petitioners state that the relief sought is a consequential relief and is per the existing pleadings which are necessary for the adjudication of the case. They further submitted that the amendment sought in the prayer clause would not attract the question of due diligence as the respondents and the petitioners were aware that the petitioners were exercising the right of pre-emption to purchase the undivided rights and therefore, no valuable right would accrue in favour of the respondents as it is fait- accompli and they were bound to execute the sale deed in favour of the petitioners on succeeding in the plea of pre-emption. The prayer clause (b) sought to be amended is reproduced below: -

*“The prayer clause (b) needs to be amended by adding the following words:*

*a) after the words deed of sale, “dated 28-08-2013 executed before the Sub Registrar of Ilhas”.*

*b) After the words null & void, “and consequently direct the Defendant no 1 to 7 to execute sale deed in respect of their undivided rights, share and interest*

*in the suit property to the Plaintiffs for an amount of Rs 48,00,000/- (Rupees Forty Lacs only).”*

The amended clause (b) would be as under:

*b) For a Declaration that the Deed of Sale dated 28-08-2013 executed before the Sub Registrar of Illhas between Defendants no 1 to 7 and Defendant no 8 in respect of their undivided rights/share to the said property is illegal, null & void and consequently direct the Defendant no 1 to 7 to execute sale deed in respect of their undivided rights, share and interest in the suit property to the Plaintiffs for an amount of Rs 48,00,000/- (Rupees Forty Lacs only).”*

13. The respondents in their reply to the application for amendment filed by the petitioners contended that the relief sought is barred by limitation and such an amendment at the fag end of the trial should not be entertained.

The Impugned Order

14. The trial Court, after hearing both parties by the impugned order dated 23.10.2024, was pleased to dismiss the petitioners' application for amendment.

15. The learned trial Court rejected the petitioners' application after placing reliance on the judgments of the Hon'ble Supreme Court in *Basavaraj, Voltas Limited, South Konkan Distilleries and another Vs Prabhakar Gajanan Naik and others, Van Vibhag Karmarchari Griha Nirman Sahakari Sanstha Maryadit, Revajeetu Builders and developers, L. C. Hanumanthappa and Sampath Kunu Ayyaka and*

concluded that the suit was filed for declaration and permanent injunction and the amendment application filed to add the prayer carves out relief seeking partition and possession which is time-barred. The learned trial Court has proceeded, in rejecting the petitioners' prayer for amendment.

### Rival Contentions

**16.** Learned Senior Advocate Mr. Kantak for the petitioners has vehemently argued that the learned trial Court was in error in assuming that by the proposed amendment, the petitioners were seeking to alter the nature and character of the case set up in the plaint. He submits that the amendment was being sought only because of an inadvertent error. A bare reading of the amendment would demonstrate that the same is already implicit and is a consequential relief. He submitted that the delay in circumstances of the case was no ground for refusal of the application for the amendment as the petitioners had already prayed for a declaration and that there was already a concluded contract between the petitioners and the respondents for the purchase of their undivided right of share by the petitioners. The pleadings about the violation of the preemptory rights of the petitioners, the proposed amendment is implicit in it and it is being made explicit and such amendment will not cause any prejudice to the respondents as there is no change in the nature of the suit and also in the pleadings in the

plaint except the prayer. He further contended that the trial Court by dismissing the application for amendment of the plaint has subjected the petitioners to grave hardships and deprivation of their rights and such an approach would give rise to multiplicity of the proceedings. No substantial change has been sought to be brought in the suit except to change the nature of prayer based on the averments already contained in the plaint.

**17.** Learned Senior Advocate for petitioners by referring to the judgments relied upon by the trial Court submitted that the same is erroneous as the present case stands on a different footing and is distinguishable. He contended that the finding of the trial Court is in contravention of the settled principle of law and legal propositions as has been laid down by the Hon'ble Apex Court. Learned Senior Counsel placed reliance on the following judgments: -

1. *Pankaja & Anr. V/s Yellappa, (2004) 6 SCC 415*
2. *Siddalingamma & Anr. V/s Mamtha Shenoy, (2001) 8 SCC 561*
3. *Life Insurance Corporation of India V/s Sanjeev Builders Pvt. Ltd., (2022) 16 SCC 1*
4. *Surendra Bahadur Singh and Anr. V/s Yogendra Bahadur Singh, Civil Misc. Jurisdiction No. 673/2018*
5. *Devendra Sadho V/s Smt. Pramila Kumar & ors. I.L.R 2024 M.P.54*
6. *Prithi Pal Singh & Anr. Amrik Singh & Ors., (2013) 9 SCC 576*

*7. Ragu Thilak D. John V/s S. Rayappan & Ors.,  
(2001) 2 SCC 472*

**18.** Per contra, Ms. Agni, learned Senior Advocate for the respondents, submitted that the said amendment is barred by limitation as the nature of the suit is limited to declaratory relief and other reliefs as set out in the plaint and the same is pending for the last eleven years. According to the learned Senior Advocate, the sale deed was executed in favour of respondent no.8 in alleged violations of the preemptive right of the petitioners in the year 2013 and therefore, the cause of action arose in the year 2013. The relief which is sought to be added in prayer clause (b) is after eleven years which is hopelessly belated. The amendment to the plaint as sought by the petitioners at the fag end of the trial amounts to seeking a fresh relief which cannot be permitted. She further stated that if the relief is granted, it would prejudice the rights of the respondents. Moreover, respondent nos. 1 to 7 have already executed the sale deed in favour of respondent no. 8. and even if the said sale is declared to be null and void the theory of relation back would not apply. She further contended that the petitioners, despite knowledge of the reliefs sought by them, failed to exercise at the appropriate stage. She has also questioned the power of superintendence of the Court under Article 227 of the Constitution of India. She further places reliance on the following judgments in support of her submissions: -

1. *Basavaraj V/s Indira & Ors.*, (2024) 3 SCC 705.
2. *Voltas Limited V/s Rolta India Ltd.*, (2014) 4 SCC 516
3. *Orient Club Building and Association & Ors. V/s Mrs. Nilofer Abhijit Gupta*, Judgment dated 19/06/2024 in WP.10047/2019.
4. *Nitaben Dinesh Patel V/s Dinesh Dahyabhai Patel*, (2021) 20 SCC 210.
5. *Ragu Thilak D. John V/s S. Rayappan & Ors.*, (2001) 2 SCC 472.
6. *L.C. Hanumanthappa V/s H.B. Shivakumar*, (2016) 1 SCC 332.
7. *Shalini Shyam Shetty and Another V/s Rajendra Shankar Patil*, (2010) 8 Supreme Court Cases 329.
8. *Jai Singh and Others V/s Municipal Corporation of Delhi and Another*, (2010) 9 SCC 385.

19. The argument of the Senior Advocate for the respondents, questioning the Court's power under Article 227 of the Constitution of India, by placing reliance on *Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil and Jai Singh and others V. Municipal Corporation of Delhi and another* (supra) is misconceived.

Analysis

20. Before I travel further it is appropriate to read down Order VI Rule 17 of CPC as under:-

“[17. Amendment of pleadings.--The Court may at any stage of the proceedings allow either party to



*alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

*Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.]”*

**21.** A bare reading of Order VI Rule 17 of CPC reveals the following: The provision used the word “may” as well as “shall”. They are, however, used in different contexts, and therefore no confusion arises consequently, the provision states that the Court may at any stage of the proceedings allow amendment of the pleadings. The use of the word “may”, in this context is permissive and empowering in nature. It indicates that the Court is empowered, at any stage of the proceedings, to allow amendment of the pleadings. Additionally, from the point of evaluation of the grammatical arrangement of words, no other words could be used in place of “may” as it is followed with words “at any stage of the proceedings”. These opening words of Order VI Rule 17 of CPC, therefore, indicate that amendment of pleading may be allowed by the Court at any stage of the proceedings. The use of the word “shall”, later in Order VI Rule 17 of CPC is, however, imperative and mandatory. The clear intent of the legislature is that all amendments

which satisfy the criteria envisaged by Order VI Rule 17 of CPC shall be allowed. Rather, it casts an obligation and a duty to carry out, necessarily, all such amendments as are necessary for determining the real question in controversy between the parties.

**22.** The principles governing applications seeking amendment of pleadings, moved under Order VI Rule 17 of CPC, are therefore well settled. By judicial fiat, however, these principles have been subjected to exceptions where allowing the amendment would result in irreparable injustice to the opposite party, or where, by the amendment, the party seeking amendments withdraws or resiles from admission or pleading made by him during the proceedings thereby resulting in injustice to the opposite party. A time-barred claim too ordinarily, cannot be sought to be introduced by an amendment in a plaint; this principle, however, is not absolute and in certain circumstances, a Court may permit the introduction of a time-barred claim by amendment *ex-debito justitiae*. Where the amendment changes the nature of the suit or the cause of action, to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed, where, however, the amendment sought is only concerning the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

23. I find that the judgments relied upon by the learned Senior Advocate for the petitioners are congruent with the settled position on principles dictating the amendment of pleadings as well as the power of superintendence of the High Court granted under Article 227 of the Constitution.

24. In *Life Insurance Company* (supra), the Hon'ble Supreme Court, after discussing various case laws has carved out the following principles to be considered while dealing with the application under provisions of Order VI Rule 17 of CPC in paragraphs 71.2 to 71.11 which read as under:-

*“ 71.2. All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order 6 Rule 17CPC.*

*71.3. The prayer for amendment is to be allowed:*

*71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.*

*71.3.2. To avoid multiplicity of proceedings, provided*

*a) the amendment does not result in injustice to the other side,*

*(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear*

*admission made by the party which confers a right on the other side, and*

*(c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*

*71.4. A prayer for amendment is generally required to be allowed unless:*

*71.4.1. By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.*

*71.4.2. The amendment changes the nature of the suit.*

*71.4.3. The prayer for amendment is mala fide, or*

*71.4.4. By the amendment, the other side loses a valid defence.*

*71.5. In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

*71.6. Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

*71.7. Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

71.8. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

71.9. Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

71.10. Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be

allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi*).”

25. In the above referred case of *Life Insurance company* (supra), the primary question in controversy of this petition concerning the threshold for allowing or per contra disallowing amendment of pleading has been enunciated exhaustively and has been settled conclusively. The factual matrix relating to the issue in controversy are substantially similar, therefore, in view of this position, ratio would squarely apply.

26. The proscription against allowing an application for amendment, where the amendment results in setting up a time-barred claim, is not absolute. In *L. J. Leach and Company Limited Vs. Jardine Skinner and Company*, reported in *AIR 1957 SC 357*, the Hon’ble Supreme Court held that the fact that the claim which was sought to be introduced by the amendment was time bared was not an absolute bar and that a time-barred claim could also be sought to be introduced by amendment if the Court felt it necessary to do so ex debito justitiae. Where the amendment would enable the Court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment was required to be allowed. The controversy in the present case is covered by the ratio laid down by the Hon’ble Apex Court in the judgment in *Life Insurance Company* (supra). In *Pankaja*

& Anr. V/s Yellappa, Siddalingamma & Anr. V/s Mamtha Shenoy, Surendra Bahadur Singh and Anr. V/s Yogendra Bahadur Singh, Civil Misc. Jurisdiction No. 673/2018, Devendra Sadho V/s Smt. Pramila Kumar & Anr. Prithi Pal Singh & Anr. Amrik Singh & Ors; (supra) on reading the judgments rendered on the ambit of Order VI Rule 17 of CPC, the proposition emerged that all amendments which are necessary for determining the real controversy; if the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

27. The decision in *Raghu Thilak D. John* (supra) relied upon by the petitioners and the respondents lays down that the primary purpose of allowing amendment of pleadings is to minimize litigation. And that, if it is argued that an issue brought to the fore by way of such an amendment is barred by the limitation, then the plea of limitation could be made a subject matter after allowing the amendment prayed for. Therefore, a perusal of this judgment would support a proposition in favour of allowing the amendment of pleading.

28. The proviso regarding amendment after the commencement of trial also would not apply here for the simple reason that it postulates the introduction of facts or other matters which the party could have raised earlier, which is not the case here. The factual matrix in *Nitaben Dinesh Patel* (supra) is distinct from the one in the instant petition and

discusses the amendment of pleadings to introduce facts or other matters and is, hence, inapplicable.

**29.** The case of *Basavaraj* (supra) and *L.C. Hanumanthappa* (supra) relied upon by the respondents also has no applicability since, at the cost of repetition the petitioners truly do not seek any new prayer, nor do they seek any new relief. As observed (supra) the question of limitation does not arise and consequently, the application of ratios in the judgments pertaining to that aspect does not arise and therefore not discussed.

**30.** The object of Order VI Rule 17 of CPC is to empower the Courts to try the case on its merits and allow all those amendments that are necessary for determining the real controversy. But it should never cause injustice to the other party. Courts exist to do complete justice to the parties, and that can be done only when the real issue between the parties is heard. Hence, they are empowered to grant amendments to pleadings. The purpose is to determine the real issue between the parties and not punish them for their mistakes or negligence. In *Rajesh Kumar Agarwal vs. Rajmala Exports* (2012) 5 SCC 337, the Supreme Court explained the object of the amendments of the pleading. It was held in this case that the Courts must not refuse any amendments that are bonafide, necessary and honest. The Court further stated that the object of this provision is to allow both parties to amend pleadings in a



just manner. One of the basic consideration for permitting amendment should be to avoid a multiplicity of litigation's.

**31.** The point that arises in the present petition is whether the application for amendment is truly for consequential relief or whether the relief sought is implicit in the existing prayers itself and the amendment sought would only be bringing out what is otherwise a necessary sequitur if the suit was to be decreed. I am of the considered opinion that it is the latter.

**32.** The perusal of the plaint reveals that the petitioners are seeking to enforce their right to pre-emption in respect of the suit property of which they are co-owners along with respondents no.1 to 7. The suit property has been sold to respondents no. 8 for Rs.48 lakhs. Respondents no.1 to 7 vide notice dated 13.8.2013 called upon the petitioners to exercise their right of pre-emption in respect of undivided share in the suit property which they were willing to sell to respondents no.8. The petitioners vide reply dated 21.8.2013 accepted the offer of respondents no.1 to 7 to purchase their share at Rs.48 lakhs but despite the same respondents no. 1 to 7 executed a sale deed on 28.8.2013 in favour of respondent no.8. The documented fact being clear, the rest of the tale spun by the parties becomes irrelevant for deciding the issue at hand.

**33.** The crux of the matter as regards the amendment is that the petitioners seek directions to respondents no. 1 to 7 to execute the sale

deed in respect of their undivided share in the suit property for a sum of Rs.48 lakhs. Whether the consequential relief is required to be prayed for separately or as observed herein before, would it not be followed as a sequitur if the petitioners prove their case and obtain a decree of pre-emption?

**34.** I have given anxious consideration to the aforesaid questions and the amendment cannot be said to be a consequential relief as posited under the Specific Relief Act 1963. The act of executing of sale deed is an act, which, if the suit is decreed, can be asked for in an execution proceeding, in the event the respondents no. 1 to 7 were to refuse to obey the decree willingly. Therefore, the amendment cannot be said to introduce consequential relief not sought before or that the issue of limitation would arise for seeking such a relief.

**35.** It is trite that procedural law is a handmaiden of justice and not designed to trip litigants. The trial Court ought to have simply posed a question as to whether the petitioners couldn't have sought the execution of the sale deed in execution proceedings had their suit been decreed, to which the answer for granting the amendment or not would have easily surfaced.

**36.** In my considered opinion the learned trial Court misdirected itself and got embroiled in the controversy as to whether a consequential relief could be now sought after 11 years of the cause of action having arisen, which is what the amendment, according to the

learned trial Court sought to do. As observed by me, where the suit was to be decreed was to be decreed and it was held that the petitioners had exercised their right to pre-emption and were therefore entitled to have a sale deed executed in their favour for a consideration of Rs. 48 lakhs, physical act of executing a sale deed was a sequitur which need not have separately prayed for.

**37.** In any event, the amendment application having been filed, the learned trial Court ought to have focused on the effect of the amendment rather than going by the technicalities of granting the amendment and whether the relief sought would have been time-barred. Although to my mind, the amendment was not called for, it merely clarifies the relief sought by the petitioners, which would have merely helped the Executing Court in the event the suit had to be decreed. Thus, the amendment was essentially clarificatory in nature, certainly did not make out a new case or insert any new relief and therefore, the question of limitation does not arise. It is well settled that the CPC as a procedural statute cannot be so interpreted as to defeat substantive rights.

**38.** I am therefore of the considered opinion that the amendment in the prayer clause on the plaint, sought to be affected by the petitioner via its application under Order VI Rule 17 of CPC, deserves to be allowed and that the learned trial Court in holding otherwise has erred.

39. Arguments regarding supervisory power under Article 227 of the Constitution of India is concerned the Hon'ble Apex Court has held that the High Court can interfere in the exercise of its jurisdiction of Superintendence where there has been a patent perversity in order of tribunal and Court's subordinate to it or where there has been gross failure of justice. Further, as per *Shalini Shetty* (Supra), the exercise of powers under Article 227 has been curtailed in petitions filed to agitate the rights of private parties under writ jurisdiction. However, this Court is merely deciding the question of whether amendment to pleadings may be allowed in the exercise of its power of superintendence, without a view to validate or refute the rights of the parties.

40. Hence, the argument that the Court cannot interfere with the Order of the trial court under Article 227 of the Constitution of India is a fundamental fallacy in the submissions. In any event, as I have held that the application for amendment deserves to be allowed even on merits, under Order VI Rule 17 of CPC, this aspect does not retain any significance.

#### Conclusion

41. Because of the aforesaid discussion, I am unable to concur with the findings of the learned trial Court that the amendment in the plaint, sought by the petitioner in the prayer clause (b), in the civil suit no. 36/2013 before learned Ad-hoc District Judge (FTC-1), Panaji Goa, I/C

of DJ-3 Panaji Goa was liable to be rejected under order VI Rule 17 of CPC. In my mind, the prayer for amendment did not alter the nature or character of the suit set up by the petitioner, which was essentially ventilating the rights which, according to the petitioner, endured in the petitioners' favour by virtue of the pre-emptive rights of the petitioners.

**42.** The issue of the amendment being at the end of the trial need not be detained as the respondents can be compensated with costs which I quantify at Rs.15,000/- to be paid by the petitioners to the respondents as a condition precedent for proceeding with the suit.

**43.** For these reasons, I am unable to sustain the impugned order dated 23.10.2024. The impugned order dated 23.10.2024 is accordingly quashed and set aside. The application for amendment of plaint preferred by the petitioners under Order VI Rule 17 of CPC is allowed.

**44.** In the aforesaid terms the petition stands allowed. Rule is made absolute in the above terms.

**45.** Writ Petition stands disposed of. No costs.

**NIVEDITA P. MEHTA, J.**