

IN THE HIGH COURT OF MANIPUR
AT IMPHAL
CRP(CRP Art. 227) No. 33 of 2023

Athokpam Mangi Singh, aged about 60 years, S/o Late A. Babu Singh of Lanthabal Lep Awang Leikai, P.O. Canchipur, P.S. Singjamei and District Imphal West, Manipur

... Petitioner/ Defendant

-Versus-

1. Smt. Athokpam Ningol Mayanglambam (O) Mangol Devi, aged about 70 years (now deceased) of Mongshangei Mamang Leikai, P.O. Canchipur, P.S. Singjamei and Imphal West District and her LRs.
 - (i) Mayanglambam Manihar Singh, aged about 70 years, S/o Late M. Mangol Devi of Mongsangei Mamang Leikai, P.O. & P.S. Singjamei, Imphal West;
 - (ii) Mayanglambam Rajen Singh, aged about 66 years, S/o Late M. Mangol Devi of Mangsangei Mamang Leikai, P.O. & P.S. Singjamei, Imphal West;
 - (iii) Mayanglambam (N) Hijam (O) Ibemnungshi Devi, aged about 62 years, W/o Hijam Raghmani and D/o Late M. Mangol Devi of Chingamakha, P.O. & P.S. Singjamei, Imphal West District;
 - (iv) Mayanglambam (N) Mongbijam (O) Nungshitombi Devi, aged about 58 years, W/o Mongbijam Rajit Singh and D/o Late M. Mangol Devi of Konjeng Leikai, P.O. Canchipur & P.S. Singjamei, Imphal West District, Manipur;
 - (v) Mayanglambam (N) Aheibam (O) Ashalata Devi, aged about 46 years, W/o Aheibam Ojit Singh and D/o Late M. Mangol Devi of Heiranggoithong, P.O. Canchipur and P.S. Singjamei, Imphal West District, Manipur
2. Smt. Athokpam Ningol Konsam Ongbi Angoubi, aged about 75 years (now deceased) of Langthabal Lep Awang Leikai, Imphal, represented by her LRs.

- (i) Konsam Manihar Singh, aged about 55 years, S/o Late Konsam Ongbi Angoubi Devi;
- (ii) Konsam Ahongjao Singh, aged about 52 years, S/o Late Konsam Ongbi Angoubi Devi;
- (iii) Konsam Sumanta Singh, aged about 49 years, S/o Late Konsam Ongi Angoubi Devi;
- (iv) Konsam Ratan Singh, aged about 47 years, S/o Late Konsam Ongbi Angoubi Devi;
- (v) Konsam Somorjit Singh, aged about 45 years, S/o Late Konsam Ongi Angoubi Devi;

All are resident of Langthabal Lep Awang Leikai, P.O. Canchipur & P.S. Singjamei, Imphal West District, Manipur.

- (vi) Konsam Ningol Arambam Ongbi Radhe Devi, aged about 62 years, W/o A. Iboyaima Singh and D/o Late Konsam Ongbi Angoubi Devi of Langthabal Mantrikhong, P.O. Canchipur & P.S. Singjamei, Imphal West District, Manipur;
- (vii) Konsam Ningol Thounaojam Ongbi Bino Devi, aged about 59 years, W/o Late Th. Mohindro Singh, D/o Late Konsam Ongbi Angoubi Devi of Meijarao Makha Thounaojam, P.O. & P.S. Wangoi, Bishnupur District, Manipur;
- (viii) Konsam Ningol Athokpam Ongbi Sumati Devi, aged about 42 years, W/o A. Somendro Singh, D/o Late Konsam Ongbi Angoubi Devi of Langthabal Lep Awang Leikai, P.O. Canchipur & P.S. Singjamei, Imphal West District, Manipur.

... Respondents/ Plaintiffs

IN THE MATTER OF:

**In the Judicial Misc. Case No. 59 of 2023,
Ref.: Original Suit No. 19 of 2012**

- 1. Smt. Athokpam Ningol Mayanglambam (O) Mangol Devi, aged about 70 years (now deceased) of Mongshangei Mamang Leikai, Imphal West, Manipur and her LRs.
 - (i) Mayanglambam Manihar Singh, aged about 70 years, S/o Late M. Mangol Devi of Mongsangei Mamang Leikai, P.O. & P.S. Singjamei, Imphal West;

- (ii) Mayanglambam Rajen Singh, aged about 66 years, S/o Late M. Mangol Devi of Mangsangei Mamang Leikai, P.O. & P.S. Singjamei, Imphal West;
 - (iii) Mayanglambam (N) Hijam (O) Ibemnungshi Devi, aged about 62 years, W/o Hijam Raghumani and D/o Late M. Mangol Devi of Chingamakha, P.O. & P.S. Singjamei, Imphal West District;
 - (iv) Mayanglambam (N) Mongbijam (O) Nungshitombi Devi, aged about 58 years, W/o Mongbijam Rajit Singh and D/o Late M. Mangol Devi of Konjeng Leikai, P.O. Canchipur & P.S. Singjamei, Imphal West District, Manipur;
 - (v) Mayanglambam (N) Aheibam (O) Ashalata Devi, aged about 46 years, W/o Aheibam Ojit Singh and D/o Late M. Mangol Devi of Heiranggoithong, P.O. Canchipur and P.S. Singjamei, Imphal West District, Manipur.
2. Smt. Athokpam Ningol Konsam Ongbi Angoubi, aged about 75 years (now deceased) represented by her LRs.
- (i) Konsam Manihar Singh, aged about 55 years, S/o Late Konsam Ongbi Angoubi Devi;
 - (ii) Konsam Ahongjao Singh, aged about 52 years, S/o Late Konsam Ongbi Angoubi Devi;
 - (iii) Konsam Sumanta Singh, aged about 49 years, S/o Late Konsam Ongi Angoubi Devi;
 - (iv) Konsam Ratan Singh, aged about 47 years, S/o Late Konsam Ongbi Angoubi Devi;
 - (v) Konsam Somorjit Singh, aged about 45 years, S/o Late Konsam Ongi Angoubi Devi;
- All are resident of Langthabal Lep Awang Leikai, P.O. Canchipur & P.S. Singjamei, Imphal West District, Manipur.
- (vi) Konsam Ningol Arambam Ongbi Radhe Devi, aged about 62 years, W/o A. Iboyaima Singh and D/o Late Konsam Ongbi Angoubi Devi of Langthabal Mantrikhong, P.O. Canchipur & P.S. Singjamei, Imphal West District, Manipur;
 - (vii) Konsam Ningol Thounaojam Ongbi Bino Devi, aged about 59 years, W/o Late Th. Mohindro Singh, D/o Late Konsam

Ongbi Angoubi Devi of Meijarao Makha Thounaojam, P.O.
& P.S. Wangoi, Bishnupur District, Manipur;

(viii) Konsam Ningol Athokpam Ongbi Sumati Devi, aged about
42 years, W/o A. Somendro Singh, D/o Late Konsam Ongbi
Angoubi Devi of Langthabal Lep Awang Leikai, P.O.
Canchipur & P.S. Singjamei, Imphal West District, Manipur.

... Plaintiffs/ Opposite Parties

-Versus-

Shri Athokpam Mangi Singh, aged about 60 years, S/o Late Babu
Singh, a resident of Langthabal Lep Awang Leikai, P.O. & P.S.
Singjamei, Imphal West District, Manipur.

... Defendant/ Applicant

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the petitioner	::	Mr. R.K. Tomma, Advocate
For the respondents	::	Mr. H. Pari, Advocate
Date of hearing	::	01-02-2024
Date of judgment	::	15-05-2024

J U D G M E N T

[1] Heard Mr. R.K. Tomma, learned counsel appearing for the
petitioner and Mr. H. Pari, learned counsel appearing for the respondents.

The present revision petition has been filed with the prayer for
quashing and setting aside the order dated 12-04-2023 passed by the Civil
Judge, Junior Division, Imphal West - II in Judl. Misc. Case No. 59 of 2023
(Ref:- O.S. No. 19 of 2012) coupled with the prayer for directing the Civil
Judge, Junior Division, Imphal West - II to proceed with the trial of the suit
after allowing the amendment of the written statement filed by the petitioner
in connection with the said original suit.

[2] The respondents No. 1 and 2, during their lifetime, filed the aforesaid O.S. No. 19 of 2012 in the Court of Civil Judge, Junior Division, Imphal West against the present petitioner claiming the following reliefs:-

- (i) A decree declaring that the plaintiffs are the absolute owners of the suit land;
- (ii) A decree declaring that the defendant acquires no right, title and interest over the suit land;
- (iii) A decree declaring the order dated 13-02-1980 passed by the SDC/ Hiyangthang in Mutation Case No. 18/SDC/IW(S)/1980 and order dated 15-09-1980 passed by the SDC/ Hiyangthang in Mutation Case No. 294/SDC/IW(S)/1980 are illegal, void and non-est and that has no binding effect to the plaintiffs;
- (iv) A decree for eviction of the defendant from the suit land described in Schedule "A" by demolishing the suit structures described in Schedule "B" Schedule "C-1" and Schedule "C-2" of the plaint and deliver possession of the same to the plaintiffs;
- (v) Cost of the litigation; and
- (vi) Any other reliefs which the Hon'ble Court may deem fit and proper.

[3] The petitioner, as the sole defendant, filed his written statement dated 30-01-2013 and as per record, the petitioner also filed a recast of his written statement on 24-06-2015 thereby indicating that the petitioner amended his original written statement filed on 30-01-2013. The said written statement is an elaborate and detailed one and the main defence taken by the petitioner in his written statement is that he purchased the suit land from the legal heirs of the original owner of the suit land including the

present respondents No. 1 and 2 under an oral agreement and that he has been living on the suit land along with his family members by constructing his dwelling house and out house inside the suit land without any interruption from any quarter.

[4] After about ten years from the date of filing his written statement and when the suit was at the stage of final hearing, the petitioner filed an application registered as Judl. Misc. Case No. 59 of 2023 (Ref:- O.S. No. 19 of 2012) before the Civil Judge, Junior Division, Imphal West-II with a prayer for allowing amendment of his written statement as proposed in the said application. By the proposed amendment, the petitioner seeks to insert a new line of defence in his written statement by stating that he had acquired title by prescription by being in possession of the suit land to the knowledge of the respondents/ plaintiffs for more than thirty years and as such, the possession of the petitioner become adverse to the respondents including their legal heirs and interested persons. In the said application, no reason has been given by the petitioner as to why he could not approach the court for amendment of his written statement before commencement of the trial of the suit.

[5] The trial court rejected the amendment application filed by the petitioner by passing the order dated 12-04-2023, impugned herein. The reasons given by the trial court for rejecting the amendment application are as under:-

- (a) The case was at the stage of final hearing and the plaintiffs' counsel had already submitted their written argument and that written argument of the defendant was to be submitted by his counsel before the amendment application was filed;

- (b) The proposed amendment are not necessary for the purpose of determining the real question of controversy between the parties;
- (c) By the proposed amendment, the petitioner has set up new claim of title over the suit land through adverse possession; and
- (d) The proposed amendment could have been made part of the written statement if there was due diligence on the part of the petitioner and his counsel and that such amendment cannot be allowed at the belated stage of final hearing of the case as there was lack of due diligence on the part of the petitioner and his counsel.

[6] Mr. R.K. Tomma, learned counsel appearing for the petitioner submitted that the impugned order had been passed by the trial court by ignoring the judgments of the Hon'ble Supreme Court of India regarding amendment cited by the counsel for the petitioner at the time of hearing of the amendment application and as such, the impugned order is arbitrary and illegal and the same is a defective order passed in violation of the settled laws. It has also been submitted that the trial court has failed to apply its mind to the real facts and circumstances of the case at the time of passing the impugned order and that the trial court has committed patent or flagrant error and the impugned order had been passed perfunctorily on wrong premises and as such, the impugned order is liable to be quash and set aside. It has also been submitted by the learned counsel that the amendment of the petitioner's written statement as proposed in the aforesaid amendment application are highly required to determine the real point of controversies between the parties and the same will help the trial court to do complete justice to both sides and that if the proposed

amendment is not allowed, the petitioner will suffer from irreparable loss and hardship. The learned counsel, accordingly, prays for setting aside the impugned order and for allowing the amendment of the written statement as proposed by the petitioner in his amendment application.

[7] The learned counsel for the respondents submitted that the amendment application was filed very belatedly and at the stage of final hearing of the suit and that the petitioner did not give any explanation or reason in his amendment application about the efforts made by him and his inability to make the proposed amendment in his written statement before commencement of the trial of the suit. It has also been submitted that the trial court declined to exercise its inherent discretion and rejected the amendment application filed by the petitioner on the ground that there was lack of due diligence on the part of the petitioner and his counsel in filing the amendment application and as such, there is no ground for interfering with the impugned order passed by the trial court.

The learned counsel further submitted that if the claim of adverse possession as proposed amendment is allowed, it will amount to allowing the petitioner to take contradictory pleas to his earlier claim of title over the suit land by way of purchase, which is not permissible in law. In support of his contention, the learned counsel cited the judgment of the Hon'ble Apex Court in the case of **"Government of Kerala & anr. Vs. Joseph & ors."** Reported in **AIR 2003 SC 3988** wherein it has been held as under:-

"21.9 Claim of independent title and adverse possession at the same time amount to contradictory pleas. The case of Annasaheb Bapusaheb Patil v. Balwant (two-Judge Bench) elaborated this principle as:

"15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a

person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all."

This principle was upheld in the case of Mohan Lal v. Mirza Abdul Gaffar (two- Judge Bench) –

"4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period of his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.

The Court in Uttam Chand (supra) has reiterated this principle of adverse possession."

[8] In the case of **"Rajkumar Gurawara (Dead) through LRs Vs. S.K. Sarwagi and Company Private Limited & anr."** Reported in (2008) 14 SCC 364, it has been held by the Hon'ble Apex Court as under:-

"12. In order to consider whether the appellant-plaintiff has made out a case for amendment of his plaint, it is useful to refer Order 6 Rule 17 CPC which reads 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.

The first part of the rule makes it abundantly clear that at any stage of the proceedings, parties are free to alter or amend their pleadings as may be necessary for the purpose of determining the real questions in controversy. However, this Rule is subject to proviso appended therein. The said Rule with proviso again substituted by Act 22 of 2002 with effect from 1-7-2002 makes it clear that after the commencement of the trial, no application for amendment shall be allowed. However, if the parties to the proceedings are able to satisfy the court that in spite of due diligence they could not raise the issue before the commencement of trial and the court is satisfied with their explanation, amendment can be allowed even after commencement of the trial.”

“13. To put it clear. Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As rightly pointed out by the High Court in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the latter case, namely, after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the court to satisfy the conditions prescribed in the proviso.”

[9] In the case of **“Chander Kanta Bansal Vs. Rajinder Singh Anand”** reported in **AIR 2008 SC 2234**, the Hon’ble Apex Court held as under:-

“8. In order to find out whether the application of the defendant under Order VI, Rule 17 for amendment of written statement is bona fide and sustainable at this stage or not, it is useful to refer to the relevant provisions of CPC. Order 6, Rule 17 reads thus:

“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."

This rule was omitted by the Code of Civil Procedure (Amendment) Act, 1999. However, before the enforcement of the Code of Civil Procedure (Amendment) Act, 1999, the original rule was substituted and restored with an additional proviso. The proviso limits the power to allow amendment after the commencement of trial but grants discretion to the court to allow amendment if it feels that the party could not have raised the matter before the commencement of trial in spite of due diligence. It is true that the power to allow amendment should be liberally exercised. The liberal principles which guide the exercise of discretion in allowing the amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be granted, while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretence of amendment."

"9. With a view to shorten the litigation and speed up the trial of cases Rule 17 was omitted by amending Act 46 of 1999. This rule had been on the statute for ages and there was hardly a suit or proceeding where this provision had not been used. That was the reason it evoked much controversy leading to protest all over the country. Thereafter, the rule was restored in its original form by amending Act 22 of 2002 with a rider in the shape of the proviso limiting the power of amendment to some extent. The new proviso lays down that no application for amendment shall be allowed after the commencement of trial, 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. But whether a party has acted with due diligence or not would depend upon the facts and circumstances of each case. This would, to some extent, limit the scope of amendment to pleadings, but would still vest enough powers in courts to deal with the unforeseen situations whenever they arise."

“10. The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the other’s case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.”

“11. Keeping the above broad principles in mind, let us ascertain whether the defendant has justiciable cause to file an application praying for amendment of a written statement for bringing an agreement dated 10-09-1982. We have already referred to the fact that the plaintiff had approached the court seeking a decree for mandatory injunction as early as on 1986. We also refer to the fact that within a short duration i.e. in 1986 itself, the defendant has filed a written statement. Absolutely, there is no whisper about the prior partition agreement dated 10-09-1982. No doubt, in the application for amendment, it was stated that her son who is a Chartered Accountant all along was looking after this suit and he died in the year 1998. It is also available from the very same application that apart from her first son, namely, Sunit Gupta, defendant has another son by name Navneet Agarwal. Admittedly, the son who looking after the suit was none else than a Chartered Accountant. In such circumstances, if the alleged agreement dated 10-09-1982 between the plaintiff and defendant was in existence nothing prevented her son, Chartered Accountant, to bring it to the notice of her counsel and refer it in the written statement filed in the year 1986. It is relevant to mention that in the reply, the plaintiff has specifically denied the same and asserted that the alleged agreement/partition deed dated 10-09-1982 is a forged document and based on the same, the proposed amendment cannot be allowed. It is also not in dispute and best known to both parties the suit which is of the year 1986 came to be taken up for trial only in 2004 and admittedly on the date of filing of the petition for amendment, the trial was on the verge of completion. It was brought to our notice that both sides have closed their evidence and completed their argument, but only at this stage the defendant filed the said application for amendment of her written statement. As discussed above,

though first part of Rule 17 makes it clear that amendment of pleadings is permitted at any stage of the proceeding, the proviso imposes certain restrictions. It makes it clear that after the commencement of trial, no application for amendment shall be allowed. However, if it is established that in spite of "due diligence" the party could not have raised the matter before the commencement of trial depending on the circumstances, the court is free to order such application. The words "due diligence" has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care, caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs. It is clear that unless the party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial. As mentioned earlier, in the case on hand, the application itself came to be filed only after 18 years and till the death of her first son Sunit Gupta, Chartered Accountant, had not taken any step about the so-called agreement. Even after his death in the year 1998, the petition was filed only in 2004. The explanation offered by the defendant cannot be accepted since she did not mention anything when she was examined as witness."

"12. As rightly referred to by the High Court in Union of India vs. Pramod Gupta (dead) by L.Rs. and others, (2005) 12 SCC 1, this Court cautioned that delay and laches on the part of the parties to the proceedings would also be a relevant factor for allowing or disallowing an application for amendment of the pleadings."

[10] In my considered view, the principle of law laid down by the Hon'ble Apex Court in the aforesaid judgments are applicable in the case in hand. In the present case, the petitioner filed his written statement on 30-01-2013 and thereafter, the petitioner also filed a recast of the said

written statement on 24-06-2015 thereby indicating that some amendment have been made in his original written statement and the petitioner could have incorporated the proposed amendment at that time but he failed to do so. After about ten years from the date of filing his written statement and when the trial of the suit was at the stage of final hearing, the petitioner filed the amendment application very belatedly and without giving any explanation about the delay and his inability to file the said amendment application before commencement of the trial. Taking into consideration such relevant factors, the trial court refused to exercise its inherent discretion as provided under the proviso to Order VI Rule 17 of the CPC and rejected the amendment application on the grounds mentioned in the impugned order.

In view of the above, this court did not find any ground or reason for interfering with the impugned order passed by the learned trial court and accordingly, the present petition is hereby dismissed.

JUDGE

FR / NFR

Devananda