

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

CRP No.96 of 2024

1. Sri Biswajit Banik, aged about 40 years, son of Sri Arun Banik, resident of Adarsha Palli, College Tilla, P.O. Agartala College-799004, P.S. East Agartala, District- West Tripura.

2. Smt. Dolli Banik, aged about 65 years, wife of Sri Arun Banik, resident of Adarsha Palli, College Tilla, P.O. Agartala College-799004, P.S. East Agartala, District- West Tripura.

..... *Defendant-Petitioner(s)*

V E R S U S

1. Sri Sankar Prasad Roy, son of late Krishna Mohan Roy, resident of Banamalipur, Jail Road, near Lal Bahadur Chowmuhan, P.O. Agartala-799001, P.S.- East Agartala, District- West Tripura.

..... *Plaintiff-Respondent(s)*

2. Assistant Municipal Commissioner, East Zone, Agartala Municipal Corporation, Jail Ashram Road, Near Satadal Sangha, P.S. East Agartala, District- West Tripura.

..... *Proforma-Defendant-Respondent(s)*

For Petitioner(s) : Mr. A. Sengupta, Advocate.

For Respondent(s) : Mr. Arijit Bhowmik, Advocate,
Mr. Dipak Deb, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of argument and delivery of Judgment & Order : 8th January, 2025.

Whether Fit for Reporting : YES.

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Sengupta, learned counsel appearing for the petitioner and also heard Mr. Arijit Bhowmik, learned counsel appearing for the respondent No.2-AMC and Mr. Dipak Deb, learned counsel appearing for the plaintiff-respondent.

[2] Application under Order VI Rule 17 by the plaintiff has been allowed by the impugned order dated 02.07.2024 in Civil Misc 25 of 2023 arising out of T.S. No.08 of 2021 which has aggrieved the defendants to

approach this Court under Article 227 of the Constitution of India. The suit was instituted for a decree of declaration that the construction of the building made by the defendants on Schedule-B of the suit land without keeping required space from the eastern boundary line of the Schedule A of the suit land i.e. from the western boundary line of Schedule-B of the suit land of defendants and also without any approval and permission from the Agartala Municipal Corporation is illegal, unauthorized and liable to be demolished. The plaintiff also sought a declaration that demolition of the existing boundary wall in between eastern boundary line of schedule-A land and western boundary line of schedule-B land by the defendant is illegal and reconstruction of the boundary wall by encroachment of the portion of the Schedule-A land of the plaintiff forcibly without permission of the Corporation by way of encroachment is also illegal and void. Plaintiff also sought a decree for permanent injunction restraining the defendants from constructing the building within required space of 3.50 metres from the boundary line of the respective suit lands of the plaintiff and defendants and also to reconstruct the boundary wall encroaching the Schedule-A suit land of the plaintiff on the basis of false and fabricated demarcation. Petitioner also sought mandatory injunction directing the defendants for demolition of 3 storied building constructed by them on the Schedule-B land without filling the required space of 3.50 metres from the western boundary line of Schedule B of the suit land.

[3] During hearing of the case, the order dated 01.05.2021 passed by the learned Trial Court in Misc(inj) No.03 of 2021 in the same suit has been placed whereby the learned Trial Court had ordered that pending

disposal of the main suit bearing T.S. No.08 of 2021, all the parties to the petition were directed to maintain *status quo*. This order remains unchallenged. The proceedings of the suit progressed further. Issues were framed and examination-in-chief of four plaintiff witnesses was submitted when this amendment application under Order VI Rule 17 was preferred by the plaintiff. Plaintiff contended that at the time of institution of the suit, they could not take measurement of the encroached portion of the homestead land after erection of new boundary wall due to resistance of the defendants and other unknown persons. They could not incorporate the fact of encroachment of the total land and also could not make the prayer for recovery of possession of the encroached portion of the homestead land of the plaintiff of Schedule-A under Section 38 of the Specific Relief Act. However, they prayed for mandatory injunction for demolition of the newly erected boundary wall forcibly. It was in these circumstances that the plaintiff sought amendment of the plaint for incorporation of the illegal acts of defendants for demolition of the old existing boundary wall and for recovery of the encroached portion of the homestead land of the plaintiff in the extreme eastern side of the homestead land of the plaintiff covered by the defendants in their homestead land in Schedule-B of the plaint by illegal erection of new boundary wall. They also sought to incorporate the prayer for getting possession of the encroached portion in the homestead land of the plaintiff.

[4] There were so many cases between the previous owners of the homestead land of defendants and the plaintiff regarding the boundary dispute. Accordingly, they sought insertion of certain averments in the

relevant paragraph of the plaint and also in the prayer portion to the extent that a decree be passed to recover the Schedule C of the suit land of the plaintiff by demolition of the new boundary wall illegally erected by the defendants by encroaching the Schedule-C of the suit land being the part of Schedule-A of the homestead land of the plaintiff. They also sought insertion of Schedule-C of the suit land at page 17 of the plaint after Schedule-B of the plaint giving the description of the Schedule-C of the suit land.

[5] The defendants had objected to the proposed amendment by filing a written objection *inter alia* taking a plea that these averments and prayer are being sought to be incorporated as the plaintiff had filed the suit in an urgency to get an interim injunction. Averments made on the question of encroachment of the plaintiff's land were denied and disputed by the defendants. Further averments regarding the inability of the plaintiff to take measurement of the encroached portion of the homestead land and to incorporate a prayer for recovery of possession was also being denied and disputed. The learned Trial Court after hearing the parties chose to allow the prayer *inter alia* observing as under :

“In the present case in hand where at the stage of the cross-examination of the witnesses of the plaintiff- petitioners submitted this prayer for amendment without justify any reason of such delay approach for amendment. If we go through the application for amendment in details as well as the case record of the main suit, then we did not find any necessary step taken by the plaintiff-petitioner side till the commencement of the trial for seeking amendment. But if we consider the fact of dispute of this case and also the nature of reliefs sought for by the plaintiff-petitioner, then it comes forward that without particulars of measurement of encroached land under the homestead property, it will create difficulties to adjudicate the issue in respect of controversy between the parties as to who is entitled to remain in possession in respect of what extend of property. Moreover if in past there was any litigation between the plaintiff-petitioner and the vendor of defendant-OPs in respect of same suit land, then the result of that suit should be incorporated here for avoiding conflict of decisions in near future. Now, after considering the decisions of Hon'ble Supreme Court of India, at this stage, in this present case if the prayer of amendment will not allow then the very purpose of this

suit will be frustrated and which will invite numbers of litigation in near future as without seeking relief for recovery of possession plaintiff-petitioner cannot ascertain the actual relief which he prayed for.

The amendment is therefore necessary in order to adjudicate the real controversy between the parties.

The question of defendant-OPs suffering prejudice or irreparable injury also does not arise since it is right to the defendant-OPs to file additional written statement raising appropriate contentions including one of denial of trespass and bar of limitation. Moreover, if the prayer for proposed amendment will allow then it will not alter the nature and character of the suit. In view of the grounds of amendment which sought for and having regard to the fact of the present suit, the application on behalf of the plaintiff-petitioner under Order VI Rule 17 of CPC for amendment of the plaint as per the schedule mentioned is hereby allowed. Hence, this case is disposed of contested.”

[6] Learned counsel for the petitioner submits that the learned Trial Court despite noticing the proviso to Order VI Rule 17 of CPC and the fact that the trial had commenced chose to allow the prayer although it itself had recorded that the plaintiff had not been able to justify the reason for delay in seeking amendment. In these circumstances, the purpose of the proviso introduced by the amendment to the Civil Procedure Code with effect from 2002 would be defeated. The defendants would be hugely prejudiced. He has placed reliance upon a decision of the Apex Court in case of *Ajendraprasadji N Pande & Another versus Swami Keshavprakeshdasji N & others*, reported in **2007 AIR SCW 513** and also a decision of this Court in case of *Subhas Banik versus Krishna Kamal Banik*, reported in **2014 0 Supreme(Tri) 411** in CRP No.92 of 2014 dated 18.12.2014.

[7] Learned counsel for the plaintiff-respondent has supported the impugned decision. It is submitted that the learned Trial Court has categorically held that though there may be delay in seeking the amendment on the part of the plaintiff but in order to adjudicate the real issue in controversy between the parties and as to who is entitled to remain in

possession in respect of what extent of the property and to avoid conflicting decisions in view of the past litigations between the plaintiff and vendors of the defendant, it would be appropriate to allow the prayer for amendment otherwise the very purpose of the suit would be frustrated.

[8] Learned counsel for the plaintiff/respondent further submits that the proposed amendment is very much connected to the subject matter of the suit and the cause of action raised in the plaint along with the reliefs prayed earlier. It would indeed help the learned Trial Court to determine the real question in controversy between the parties. Moreover, the defendant/Op has been allowed to file additional written statement after allowing the amendment. He further submits that the approach of the learned Trial Court in such matter should be to determine the real controversy and not get bogged down in the technicalities as procedural law is the handmaid of justice.

[9] Mr. Arijit Bhowmik, learned counsel for the respondent No.2-AMC has also supported the impugned order. He submits that the approach of the learned Trial Court to determine the real issue in controversy overrides all other technicalities which the rival parties may agitate. He has placed reliance upon a decision of the Apex Court in case of *State of Madhya Pradesh versus Union of India and another*, reported in (2011) 12 SCC 268 (paragraph 7 to 10). Relying upon the judgment, he submits that the purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just but the Courts while deciding such prayers should not adopt a

hypertechnical approach though amendment cannot be claimed as a matter of right under all circumstances. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally amendments are allowed in the pleadings to avoid multiplicity of litigations. Therefore, the impugned order does not warrant any interference.

[10] On consideration of rival submissions of learned counsel for the parties, pleadings referred to hereinabove and placed from record, this Court is of the opinion that the jurisdiction of the learned Trial Court in its endeavour to determine the real question in controversy between the parties should not be fettered as is also the purpose and object of allowing amendment of pleadings under Order VI Rule 17 of the CPC. In the facts of the present case though issues have been framed and examination-in-chief of four plaintiff witnesses have been submitted but on a conspectus of facts referred from the original plaint, the amendment application and its objection it is but clear that the proposed amendment is very much related to the subject matter of the suit property and the cause of action raised earlier i.e. the dispute about the boundary wall existing between the homestead land of the plaintiff and the defendants as per the description of the Schedule-A and Schedule-B land of the plaintiff and defendants respectively.

[11] Therefore, the learned Trial Court though had observed that there was delay in making a prayer for amendment by the plaintiff but if the fact of the dispute and the nature of reliefs sought by the plaintiff/petitioner is taken into account, it would show that without particulars of measurement of encroached land under the homestead property it will create difficulty to

adjudicate the issue in controversy between the parties as to who is entitled to remain in possession in respect of what extent of property. The very purpose of the suit will be frustrated if the amendment is not allowed. The opinion of the Apex Court in the case of *State of Madhya Pradesh* (supra) referred to by the learned counsel for the respondent No.2-AMC is aptly quoted hereunder:

7. The above provision deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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 proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it must be shown that in spite of due diligence, such amendment could not have been sought earlier.

8. The purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.

9. Inasmuch as the plaintiff State of Madhya Pradesh has approached this Court invoking the original jurisdiction under Article 131 of the Constitution of India, the Rules framed by this Court i.e. the Supreme Court Rules, 1966 (in short “the Rules”) have to be applied to the case on hand. Order 26 speaks about “pleadings generally”. Among various Rules, we are concerned about Rule 8 which reads as under:

“8. The Court may at any stage of the proceedings allow either party to amend his pleadings in such manner and on such terms as may be just, but only such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.”

The above provision, which is similar to Order 6 Rule 17 of the Code prescribes that at any stage of the proceedings, the Court may allow either party to amend his pleadings. However, it must be established that the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties.

10. This Court, while considering Order 6 Rule 17 of the Code, in several judgments has laid down the principles to be applicable in the case of amendment of plaint which are as follows:

(i) *Surender Kumar Sharma v. Makhan Singh* [(2009) 10 SCC 626 : (2009) 4 SCC (Civ) 294] , at para 5 : (SCC p. 627)

“5. As noted hereinafter, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on

the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment.”

(ii) *North Eastern Railway Admn. v. Bhagwan Das* [(2008) 8 SCC 511] , at para 16 : (SCC p. 517)

“16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions : (a) of not working injustice to the other side; and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.”

(iii) *Usha Devi v. Rijwan Ahamd* [(2008) 3 SCC 717 : (2008) 1 SCC (Civ) 922] , at para 13 : (SCC p. 722)

“13. Mr Bharuka, on the other hand, invited our attention to another decision of this Court in *Baldev Singh v. Manohar Singh* [(2006) 6 SCC 498] . In para 17 of the decision, it was held and observed as follows : (SCC pp. 504-05)

“17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion on the court to allow an amendment of the written statement at any stage of the proceedings.”

(iv) *Rajesh Kumar Aggarwal v. K.K. Modi* [(2006) 4 SCC 385] , at paras 15 & 16 : (SCC pp. 392-93)

“15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.”

(v) *Revajeetu Builders and Developers v. Narayanaswamy and Sons* [(2009) 10 SCC 84 : (2009) 4 SCC (Civ) 37] , at para 63 : (SCC p. 102)

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;

- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

The above principles make it clear that courts have ample power to allow the application for amendment of the plaint. However, they must be satisfied that the same is required in the interest of justice and for the purpose of determination of real question in controversy between the parties.

[12] The Apex Court has underlined that a liberal approach should be the general rule particularly in cases where the other side can be compensated with costs, and that amendments should be allowed to avoid multiplicity of litigations. The approach of the Court should not be hypertechnical though amendments cannot be claimed as a matter of right. On the other hand, learned counsel for the petitioner has referred to the decision of the Apex Court in case of *Ajendraprasadji N Pande & another* (supra). At paragraph 52 of the judgment, the Apex Court had observed that no facts were pleaded nor any grounds were raised in the amendment application to even remotely contend that despite exercise of due diligence these matters could not be raised by the appellants. Moreover, deposition of evidence of three witnesses were over as well as the documentary evidence were already tendered and that appellants’ application at Exh.64 praying for re-casting of the issues had been denied and the said order had attained finality. Such amendment would, therefore, cause serious prejudice to the contesting respondents.

[13] However, in the present facts of the case, this Court finds that it is the opinion of the learned Trial Court that in order to determine the real

issue in controversy between the parties, the proposed amendment is required to be allowed since without particulars of measurement of the encroached land of the homestead property, it would be difficult to determine as to which party is entitled to remain in possession in respect of what extent of property. Taking a cue from the observations made by the Apex Court in case of *State of Madhya Pradesh* (supra), this Court is of the view that instead of adopting a hypertechnical approach in the facts of the instant case, it would be advisable not to interfere in the matter and fetter the jurisdiction of the learned Trial Court in its attempt to determine the real issue in controversy in the suit and that too at a stage where only four plaintiff witnesses have been examined-in-chief and the defendant has also been allowed to file additional written statement to the proposed amendment being allowed.

[14] Therefore, in the facts and circumstances discussed above, this Court is not inclined to interfere in the matter. Accordingly, the instant civil revision petition is dismissed.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH) CJ

DIPESH DEB Digitally signed by DIPESH DEB
Date: 2025.01.10 19:09:05
+05'30'