



2025:AHC:174535

Reserved On: 25.08.2025

Delivered On: 26.09.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 12209 of 2023

Smt Asiya Begum

.....Petitioner(s)

Versus

Inam Khan And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Bhanu Bhushan Jauhari, Rishi Bhushan Jauhari
Counsel for Respondent(s)	:	Anil Kumar

Court No. - 9

HON'BLE MANISH KUMAR NIGAM, J.

1. This petition has been filed challenging the order dated 08.05.2023 passed by Civil Judge (Junior Division) FTC, Court No. 39, Shahjahanpur in Original Suit No. 101 of 2012 (Smt. Asiya Begum Vs. Inam Khan and others) rejecting an application filed by the plaintiff-petitioner under Order VI Rule 17 of C.P.C. for amendment in the plaint. The revision against the order passed by Civil Judge (Junior Division) FTC, Court No. 39, Shahjahanpur dated 08.05.2023 has also been dismissed by judgment and order dated 20.10.2023.

2. Brief facts of the case are Original Suit No. 101 of 2012 (Smt. Asiya Begum Vs. Inam Khan and others) was instituted by plaintiff-petitioner for the relief of cancellation of sale deed dated 04.04.2012 and also for permanent prohibitory injunction restraining the defendants from interfering with the possession of the plaintiff over the property in dispute i.e. Khasra No. 880 area 4 acres (New No. 1002). On being noticed, the defendant-respondents contested the suit and filed their written statement denying the averments made in the plaint. During pendency of the suit, plaintiff-petitioner filed an amendment application under Order VI Rule 17 of C.P.C. being paper No. 84-A for amendment in the plaint on 24.03.2023. The said application was opposed by respondent Nos. 1 to 5 by filing objection on 07.04.2023. The trial court by order dated 08.05.2023 rejected the amendment application filed by the petitioner. The revision against the said order has also been dismissed by order dated

20.10.2023. Hence the present writ petition.

3. Contention of learned counsel for the petitioner is that by the proposed amendment, the petitioner has not sought introduction of new facts, which may account to change of cause of action, withdrawal of admission. It is further submitted by counsel for the petitioner that amendments sought were clarificatory in nature of the facts, which were already pleaded. The proposed amendments were also necessary to avoid multiplicity of litigation and no prejudice was caused to the defendants-respondents. It has been further contended by counsel for the petitioner that the trial court has rejected the application of the petitioner on the ground that the petitioner had knowledge of the facts, which he wants to add, at the time of filing of the suit and the case law relied upon by the plaintiff is not applicable to the facts of the case as the amendment sought by the plaintiff is neither clarificatory in nature nor new facts are to be incorporated and by allowing the amendment instead of clarification, it is possible that the cause of action be changed. It has also been contended by counsel for the petitioner that the revisional court dismissed the revision stating that the plaintiff is trying to delay the disposal of the suit and therefore, there is no need to interfere with the order passed by the trial court, without recording any independent finding on the points raised by the revisionist. Learned counsel for the petitioner has also stated in paragraph No. 18 of the writ petition that only issues have been framed in the suit and the evidence has yet not been started.

4. *Per contra*, learned counsel for the respondents submitted that the only purpose of filing the amendment application by the plaintiff was to delay the disposal of the suit. The amendment application was filed at a very belated stage after framing of issues and therefore, amendment was hit by proviso to Rule 17 of Order VI of C.P.C. and cannot be allowed. It has also been submitted by counsel for the respondents that by the proposed amendment, the nature of the suit is changed.

5. Considering the submissions as made by the respective counsel, it would be appropriate to look into the pleadings as made by the plaintiff in the plaint. As per the plaint case, Gata No. 880 (New No. 1002) area 4 hectares belonged to the plaintiff- petitioner and defendant No. 6 in the

suit. The said land was purchased by the plaintiff from Jahirul Hasan Khan son of Azeez Khan and the mutation had also taken place on 20.09.2010 under Section 12 of the Uttar Pradesh Consolidation of Holding Act, 1953 and in the revenue record, the name of plaintiff-petitioner was recorded along with defendant No. 6 as co-tenure holder. After the consolidation operations were over, Gata No. 880 has been given New No. 1002. It was further pleaded that father of the defendant Nos. 1 and 4 got an agreement to sell executed from the predecessor in interest of the petitioner-Jahirul Hasan and filed a suit for specific performance which was dismissed by the judgment and decree dated 20.04.2001 and against the said decree, an appeal was preferred which was allowed by the District Judge on 28.09.2006. In execution proceedings, the sale deed was executed by the Civil Judge (Senior Division) in favour of the defendants on 04.04.2012. The plaintiff had no knowledge of the said sale deed and immediately after coming to know about the same the plaintiff after inquiry filed the present suit for cancellation of sale deed executed in favour of the defendants on the grounds mentioned in the suit and also for the relief that defendant Nos. 1 to 5 be restrained from interfering with the possession of the plaintiff over Gata No. 880 (New Number 1002). By amendment, the plaintiff has sought to add that Jahirul Hasan was owner of Gata Nos. 823, 880/1 and 880/3 and from the gata numbers mentioned above, new Gata No. 1002 was carved out. By the amendment, it was also sought by the plaintiff that the defendant Nos. 1 to 5 claiming their rights on the basis of sale deed regarding Gata No. 880 with which plaintiff has no concern. It was further pleaded in amendment that on the basis of sale deed dated 04.04.2012, possession was never transferred to the defendants. The plaintiff has also sought deletion of paragraph Nos. 1 and 3 of the plaint and paragraph No. 1 of the plaint to be substituted by a fresh para to the effect that plaintiff along with defendant No. 6 is the owner of Gata No. 1002. The relief was also sought to be amended by adding that the sale deed is not binding on plaintiff and defendant No. 6 after deleting the relief of cancellation of sale deed.

6. From the perusal of the plaint as well as amendment sought by the plaintiff, it is apparent that the amendments claimed by plaintiff are

clarificatory in nature and no new cause of action or relief has been added changing the nature of the suit. Initially, the suit was filed for cancellation of the sale deed which was subsequently sought to be amended by a declaration that the said sale deed is not binding on the plaintiff and defendant No. 6 and therefore, the relief claimed is practically the same and it cannot be said that the nature of suit has changed. Further, though by the proposed amendment, plaintiff has tried to add that the plaintiff has no concern with the Gata No. 880, which is the subject matter of the sale deed executed in favour of the defendants as the plaintiff is claiming rights regarding New No. 1002. Initially, the plaintiff claimed that Gata No. 1002 was carved out of old Gata No. 880 belonging to Jahirul Hasan from whom the petitioner has purchased the land in dispute. By the amendment, petitioner has claimed that Gata No. 1002 was carved out from Gata Nos. 832, 880/1 and 880/3 belonging to Jahirul Hasan from whom the petitioner has purchased the land. Land in dispute is not changed by the proposed amendment as the relief claimed by the petitioner is regarding New Gata No. 1002. The plaintiff and defendant No. 6 in the suit are claiming on the basis of sale deed executed by Jahirul Hasan in their favour and on the basis of sale deed, their name has been directed to be recorded in the consolidation proceedings and their name has also been recorded in the revenue records after the consolidation operations were over and the grievance of the plaintiff is regarding the execution of sale deed by the court in execution of a decree passed in a suit for specific performance of an agreement alleged to have been entered into by Jahirul Hasan, predecessor in interest of the petitioner in favour of predecessor in interest of defendant Nos. 1 to 5. In my view, by the proposed amendment, there is no change in the nature of the suit as the grievance of the petitioner remains the same.

7. So far as contention of learned counsel for the respondents is concerned that in view of the proviso to Rule 17 of Order VI of C.P.C., the amendment was rightly rejected by the court below as the issues have already been framed in the suit, it has been contended by counsel for the petitioner that only issues have been framed but no evidence has been led by the parties and therefore, there was no impediment in allowing the amendment application filed by the plaintiff-petitioner.

8. The Hon'ble Supreme Court in case of **Mohinder Kumar Mehra Vs. Roop Rani Mehra and others reported in (2018) 2 SCC 132**, in paragraph Nos. 13 to 24 has held that technically the trial commences when the date is fixed for leading evidence but as the amendment application was filed before leading evidence by the plaintiff despite the fact that issues were framed and date was fixed for leading evidence by the plaintiff, there will be no impediment in allowing the amendment application filed by the plaintiff.

9. Recently, this Court has also taken the same view in case of **Chitranshi Vs. Rajnarayan Tripathi in Matters under Article 227 No. 1261 of 2023** decided on **22.09.2025** and in paragraph No. 13 of Chitranshi (supra) has held as under:-

"13. The law as laid down by Hon'ble Supreme Court in case of Mohinder Kumar Mehra Vs. Roop Rani Mehra (supra) is that technically the trial commences when the date is fixed for leading evidence by the plaintiff. In Mohinder Kumar Mehra Vs. Roop Rani Mehra (supra), the Supreme Court considering the facts of the case allowed the application for amendment as the same was filed before leading evidence by the plaintiff, despite the fact that the issues were framed and date was fixed for leading evidence by the plaintiff. In the present case, it is not the case of any of the parties that the evidence has begin, only objection of the counsel for the petitioner is that the issues were settled before moving an application under Order VI Rule 17 of the C.P.C. "

10. Learned counsel for the petitioner relied upon the judgment of this Court in case of **Ram Asare v. Gyan Babu and others; 2006 (42) RCR (Civil) 885**. In case of Ram Asare (Supra), this Court after relying upon the judgment of the Supreme Court in case of **Rajesh Kumar Aggarwal v. K. K. Modi, 2006 (2) AWC 1886** held that all the amendments that are necessary for determining of the real question of controversies should be allowed. Proviso to Rule 17 of Order VI C.P.C. cannot place any impediment in allowing the amendment application, if it was otherwise liable to be allowed. The amendment cannot be refused only on the ground that the amendment application was filed after commencement of trial. Paragraph no. 7, 8 & 9 of the case of Ram Asare (Supra) is quoted as under:

“7. In Rajesh Kumar Aggarwal and Ors. v. K. K. Modi and Ors., 2006 (2) AWC 1886 the Supreme Court in paragraphs 16, 17, 18 and 19 held:

16. This rule declares that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should 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 for which amendment is sought before the commencement of the trial.

17. The object of the rule is that 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.

18. Order VI Rule 17 consist 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. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

19. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

8. From the perusal of the aforesaid, it is clear that all the amendments that are necessary for determining the real question in controversy between the parties should be allowed. Further the proviso to Order 6, Rule 17 of the C.P.C. cannot place any impediment in allowing the amendment application if it was otherwise liable to be allowed. The amendment cannot be refused only on the ground that the amendment application was filed after the commencement of the trial.

9. In the opinion of the Court, the amendment sought was necessary for determining the real controversy involved between the parties. The amendment application can to be allowed at any stage of the proceedings, even after the commencement of the trial if the amendment was necessary for determining the real question in controversy between the parties.”

11. This Court also in case of **Raja and another Vs. Sunil Kumar in Matters Under Article 227 No. 11084 of 2023** decided on 23.09.2025 has taken the same view as in case Ram Asare v. Gyan Babu (supra).

12. Learned counsel for the petitioner has also relied upon judgment of Hon'ble Supreme Court in case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another** reported in **2022 AIR (SC) 4256**, wherein the Hon'ble Supreme Court has laid down in paragraph No. 70 of the judgment as under:-

"70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) 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 VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) 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 does 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).

(iv) A prayer for amendment is generally required to be allowed unless

(i) 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,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) 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.

(vi) 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.

(vii) 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.

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

(ix) 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.

(x) 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.

(xi) 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 & Ors., 2022 SCC OnLine Del 1897)"

13. Hon'ble Supreme Court in case of **North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by Lrs.** reported in **2008(8) SCC 511**, in paragraph Nos. 15 and 16 has held as under:-

"15. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C. (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 C.P.C. postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil & Ors. 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. (Also see: Gajanan Jaikishan Joshi Vs. Prabhakar Mohanlal Kalwar)

16. These are the broad principles to be kept in view while dealing with applications under Order 41 Rule 27 and Order 6 Rule 17 C.P.C. "

14. The Supreme Court in case of **Sampath Kumar Vs. Ayyakannu and another** reported in **(2002) 7 SCC 559** has held that delay in filing an application for amendment by itself cannot be a ground for rejecting the application. Paragraph No. 9 of the judgment in case of Sampath Kumar Vs. Ayyakannu(supra) is quoted as under:-

"9. Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case

generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment."

15. In view of the laws laid down by the Hon'ble Supreme Court as well as this Court as referred above, it is settled that delay alone cannot be a ground for rejecting an amendment application, if amendment was necessary for determining the real question in controversy between the parties and no prejudice is caused to other side by allowing the amendment.

16. So far as judgments relied upon by learned counsel for the respondents in case of **Smt. Neeta Agrawal Vs. Shanti Rani Agrawal and others** reported in **ACJ 2023 page 927**, **Dr. Amitabh Kumar Gupta Vs. Awadh Bihari Nigam** reported in **ACJ Vol-2 Page No. 1723**, **Ramesh Duggal @ Pappu Vs. Pt. Ram Shanker Mishra Trust** reported in **ACJ Volume 2, Page 1401** and **Sri Firozuddin and others Vs. Shri Anwar Uddin** reported in **ACJ Vol-2, Page 1387** are not applicable to the facts of the present case.

17. In case of Smt. Neeta Agrawal (supra), the Court was of the view that by the proposed amendment there was a change in nature of the case and further the court has declined to interfere on the ground that there was no proper pleadings by the petitioner to support the relief as claimed in the petition, the respondent has no opportunity to resist or oppose such claim and if the court considers grant of such a relief, it will lead to miscarriage of justice. Paragraph Nos. 60 and 61 of the judgment in case of Smt. Neeta Agrawal (supra) is quoted as under:-

"60. In this view of the matter, I am of the opinion that in case there is no proper pleading to support the relief as claimed in the petition, then the respondent has no opportunity to resist or oppose such relief, and if the court considers and grant such relief, it will lead to miscarriage of justice.

61. In view of the aforesaid, the Court is of the opinion that the present petition is liable to be dismissed on both the grounds namely the amendment filed by the

petitioner will change the nature of the case and secondly there is no pleadings whatsoever made by the petitioner in the entire petition while challenging the aforesaid orders. Further nothing has been stated in the amendment application nor in the present petition regarding the latches in filing the amendment application since the suit was filed in this case in the year, 2000 and amendment was sought by him in the year 2009."

18. In case of Dr. Amitabh Kumar Gupta(supra) relied upon by the respondent, Court has taken view that there is no dispute on the point that except for engagement of new counsel, nothing has been stated in the amendment application and further in that case the amendment application was filed at the stage of hearing of the suit and as such, the judgment in case of Dr. Amitabh Kumar Gupta is distinguishable on facts.

19. In case of Ramesh Duggal @ Pappu (supra), the Court refused to allow the amendment application on the ground that because of the amendment there was a withdrawal of admission on the part of the party seeking amendment.

20. In case of Sri Frizouddin (supra), it has been held by this Court that change of counsel cannot be a ground for filing the amendment application.

21. With due respect to the laws laid down by this Court in judgments relied upon by the respondents, I am of the opinion that in view of the judgments of the Hon'ble Supreme Court as well as this Court, if the amendment is necessary for deciding the controversy between the parties, normally the stage of proceedings will not be an impediment for allowing the amendment, especially when no prejudice is likely to be caused to the other party.

22. In view of the discussions made above, I am of the considered opinion that the courts below have erroneously rejected the application filed by the petitioner for amendment in the plaint and the orders are liable to be set aside. Accordingly, the orders dated 08.05.2023 and 20.10.2023 are set aside. The writ petition is **allowed**.

23. Since the suit is pending since 2012, I am not remanding the matter to

the trial court to decide the application for amendment afresh. The amendment application filed by the plaintiff-petitioner is allowed. Learned counsel for the petitioner is permitted to carry out the amendment in the plaint within three weeks from today. The defendant-respondents are granted six weeks time to file their additional written statement to the amended plaint. The court below i.e. Civil Judge (Junior Division) FTC, Court No. 39, Shahjahanpur is directed to consider and decide the aforesaid suit, in accordance with law, expeditiously, preferably, within a period of eighteen months from the date of production of a certified copy of this order, after hearing all the concerned parties and giving a reasonable opportunity of leading evidence in respect of their case provided there is no other legal impediment.

(Manish Kumar Nigam,J.)

September 26, 2025

Nitika Sri.