

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**CM(M) No. 255/2023
CM No. 7938/2023**

**Reserved on: 01.07.2026
Pronounced on: 03.07.2026
Uploaded on: 03.07.2026**

Whether the operative part or full judgment
is pronounced: **Full judgment.**

1. Gurnam Singh

Age 70 years, S/O Gian Singh R/O Nai
Basti Korotana Khurd, Tehsil R. S. Pura
(Now Suchetgarh), District Jammu

.....Appellant(s)/Petitioner(s)

Through: Mr. Manpreet Singh Saini, Advocate.

Vs

1. Gurpreet Singh

2. Savjeet Singh

(Both Sons of Late Dalip Singh)

3. Mohinder Kour W/O Late Dalip Singh

**4. Mohinder Pal Singh S/O Late Pyare
Lal**

5. Surinder Singh

**6. Amanpreet Singh (Both Sons of Late
Ajit Singh**

All residents of Korotana, Tehsil R. S.
Pura, District Jammu At present
Magharpur Tehsil Jagadari, District
Yamana Nagar, Haryana.

..... Respondent(s)

Through: Mr. Raghav Gaind, Advocate vice
Mr. Rohit Kohli, Sr. Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioner has assailed the order dated 05.04.2023 passed by the learned Special Mobile Magistrate (Passenger Tax & Shops and Establishments Act), Jammu (hereinafter referred to as the 'Trial Court') in the suit titled '*Gurpreet Singh and others vs. Gurnam Singh*

and others'. By virtue of the impugned order, the application preferred by the respondents seeking amendment of the preamble and prayer clause of the suit to incorporate the recovery of possession of the suit land as a consequential relief has been allowed.

2. The petitioner has assailed the impugned order on the ground that the suit was instituted by the respondents on September 13, 2018, without seeking the essential relief of possession of the suit land mentioned in the Will. It is submitted that once the petitioner had explicitly objected in his written statement that a suit for declaration *simpliciter* was not maintainable, the application for amendment could not have been allowed by the learned Trial Court. This is particularly true given that the application was highly belated, having been filed on July 12, 2022, nearly four years after the institution of the suit. Furthermore, the petitioner contends that the amendment application was barred by the principles enshrined under Order II Rule 2 of the Code of Civil Procedure (CPC).
3. Mr. Manpreet Singh Saini, learned counsel appearing for the petitioner, has submitted that the amendment application could not have been allowed by the learned Trial Court after an inordinate delay of four years from the institution of the suit. He, therefore, submits that the instant petition be allowed and the impugned order be quashed. In support of his contentions, the learned counsel placed reliance upon the judgment of the Hon'ble Supreme Court of India in

L.C. Hanumanthappa (Dead) through LRs v. H.B. Shivakumar, (2015) 14 SCC 974.

4. *Per contra*, Mr. Raghav Gaiind, learned counsel for the respondents has argued that due to inadvertence, the relief of possession could not be sought initially. The application for amendment could not be filed earlier as the previous counsel representing the respondents was battling multiple serious ailments, requiring frequent travel to Delhi for medical treatment. He further argued that since issues have not yet been framed in the suit, the trial has not commenced. It is settled law that courts should adopt a liberal approach in allowing amendments to pleadings at a pre-trial stage
5. Heard learned counsel for the parties and perused the record.
6. Record depicts that the respondents had filed the suit for declaration to the effect that the alleged will executed on 11.08.1998 by Pyara Lal S/O Sh. Pheru Ram R/O Korotana Kalan, Tehsil R. S. Pura, District Jammu is null and void, being not applicable to the land allotted to the Displaced Persons Family of Late Sh. Para Lal over which occupancy rights were conferred on the allottee family comprised in Khasra No. 103 (04 Kanals 14 Marlas), 106 (01 Kanal 08 Marlas), 107 (08 Kanals 08 marlas), 108 (02 Kanals 02 Marlas), 109 (04 Kanals 08 Marlas) and 110 (03 Kanals 07 Marlas) situated at Suchetgarh, Tehsil R. S. Pura, District Jammu, with the consequential relief of quashing the consequential mutation No. 910 of Suchetgarh attested on the basis of said will.

7. The petitioner filed the written statement raising preliminary objections *inter alia* regarding the maintainability of the suit. It was contended that the suit was barred by limitation and that a suit seeking declaration of title without praying for the relief of possession was inherently not maintainable.
8. Thereafter, the respondents preferred an application seeking to amend the preamble and the prayer clause of the plaint to incorporate the relief of recovery of possession as a consequential relief. The respondents asserted that this relief was omitted initially due to sheer inadvertence. In paragraph 3 of the application, it was specifically pleaded that the amendment could not be moved earlier because their erstwhile counsel was suffering from serious ailments, and the subsequent delay was caused by the outbreak of the COVID-19 pandemic.
9. The petitioner resisted the amendment application, contending that it was grossly belated, having been filed nearly four years after the institution of the suit. The petitioner submitted that since the relief of possession was conspicuously omitted at the first instance, it could not be introduced subsequently by way of an amendment. Additionally, a specific plea was raised that the application was hit by the statutory bar under Order II Rule 2 of the Code of Civil Procedure (CPC).
10. The law is well settled that courts must liberally permit amendments to pleadings prior to the commencement of the trial. In the present case, it is undisputed that the trial had not yet commenced and issues were

yet to be framed when the respondents moved the amendment application. Pre-trial amendments of the pleadings are required to be allowed, if the amendments are necessary to fully and effectively adjudicate the real controversy between the parties and also to prevent a multiplicity of proceedings. Furthermore, while a mere delay in filing is rarely a standalone ground to reject a pre-trial amendment, the respondents have, in any event, sufficiently explained why this relief could not be sought at the first instance

11. In Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another, 2022 INSC 896, Hon’ble the Supreme Court of India has held 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 negated.

(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 hyper technical 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 pinpointedly 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)
(emphasis added)

12. After perusing the order impugned, this Court does not find commission of any jurisdictional error on part of the learned trial court while allowing the application preferred by the respondents for amendment of the plaint. The order impugned is well reasoned and in accordance with law, therefore, interference by this Court under Article 227 of the Constitution of India is not warranted at all.
13. Moreover, judgment in case titled as **L. C. Hanumanthappa (Since Dead) represented by his Lrs. Vs. H. B. Shivakumar** reported in **2015 AIR (SC) 3364** relied upon by the learned counsel for the petitioner is not applicable to the present facts and circumstances of the case.
14. For what all has been discussed hereinabove, the present petition is found to be misconceived and the same is accordingly **dismissed**.

(RAJNESH OSWAL)
JUDGE

Jammu
03.07.2026
Sahil Padha

Whether the order is speaking:	Yes/No.
Whether the order is reportable:	Yes/No.