



2026:UHC:4536

HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE SRI JUSTICE MANOJ KUMAR TIWARI

Writ Petition Misc. Single No. 1574 of 2026

08 June, 2026

Smt. Priya

--Petitioner

Versus

Bimlesh & another.

--Respondents

Presence:-

Mohd. Matlub, Advocate for the petitioner.

JUDGMENT

Petitioner is defendant in Original Suit No. 116 of 2023, filed by respondent No. 1 seeking declaration that the sale deed executed by Sadanand Joshi (respondent No. 2) in favour of petitioner is null and void.

2. Learned Trial Court passed interim order in that suit on 27.05.2023 restraining the defendants from creating any third party interest over the suit property and they were also directed to maintain status quo.

3. Plaintiff (respondent No. 1) thereafter moved an application seeking leave to amend the plaint of aforesaid Suit, which was allowed by learned Trial Court/ Second Additional Senior Civil Judge, Haridwar, vide order dated 04.04.2026.

4. Petitioner has challenged the order dated 04.04.2026 on the ground that in a suit seeking declaration, that the sale deed is void, plaintiff cannot



have relief of restoration of possession and demolition of structure, added through amendment in the plaint.

5. In the application filed under Order 6 Rule 17 CPC, plaintiff stated that despite the injunction granted by Trial Court vide order dated 27.05.2023, defendant (petitioner herein) forcibly took possession of the suit property and raised construction thereupon and in that backdrop, plaintiff sought permission to add one more prayer in the relief clause of the plaint. Through amendment, plaintiff sought relief of mandatory injunction for removing the construction illegally raised by defendant and also sought physical possession of the land in question.

6. Heard learned counsel for the petitioner and perused the record.

7. Order 6 Rule 17 CPC dealing with amendment of pleadings is extracted below for ready reference:-

“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.”

8. Hon’ble Supreme Court in the case of State of Madhya Pradesh v. Union of India and another, reported as (2011) 12 SCC 268 considered the law on the point in detail. Para 10 of the said judgment is reproduced below:-



“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:

“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 :

“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, at para 13

“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 :



‘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 :

“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 , at para 63 :

“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.”

9. In the case of State of A.P. v. Pioneer Builders, reported as (2006) 12 SCC 119, Hon’ble Supreme Court held that dominant object of allowing amendment in pleadings liberally is to avoid multiplicity of proceedings. Para 21 of the said judgment is extracted below:-

“21. Principles governing amendment of pleadings are well settled. Order 6 Rule 17 CPC deals with the amendment of pleadings and provides that the court may at any stage of the proceedings allow either party to alter or amend pleadings in such a 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. It is trite that though an amendment cannot be claimed as a matter of right under all circumstances, yet the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. It is equally well settled that unless serious injustice or irreparable loss is likely to be caused to the other side, the court should adopt liberal approach and not a hypertechnical approach, particularly in a case where the other side can be compensated with costs. Dominant object to allow the amendment in the pleadings liberally is to avoid multiplicity of



proceedings. Nevertheless, one distinct cause of action cannot be substituted for another nor the subject-matter of the suit can be changed by means of an amendment. The following passage from the decision of the Privy Council in *Ma Shwe Mya v. Maung Mo Hnaung* succinctly summarises the principle which may be kept in mind while dealing with the prayer for amendment of the pleadings

“All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit.”

10. In the case of *Rajesh Kumar Aggarwal v. K.K. Modi*, reported as (2006) 4 SCC 385, Hon'ble Apex Court held that while considering prayer for amendment, Court should not go into correctness or otherwise of the assertions made in the amendment application and further that merits of the amendment sought to be made are not to be gone into while considering prayer for amendment.

11. The order passed by learned Trial Court granting leave to amend to plaintiff-respondent cannot be faulted. The contention raised on behalf of defendant/ petitioner that grant of leave to amend would change nature of the suit, is unsustainable. Plaintiff contends that he was dispossessed from the land in question during pendency of the suit, despite interim injunction granted in his favour and he has prayed that possession of the land in question be restored to him after removing the structure raised by defendant. Plaintiff cannot be asked to file yet another suit for the reliefs, which he is now seeking through



amendment. Whether the averments made in the application filed under Order 6 Rule 17 CPC are correct or not can only be seen during trial. The reasons assigned by learned Trial Court for allowing plaintiff's application cannot be faulted. Hon'ble Supreme Court in the case of Life Insurance Corporation of India v. Sanjeev Builders (P) Ltd., (2022) 16 SCC 1 has considered the law on the point in great detail. Para nos. 71.3 to 71.11 of the said judgment are extracted below:

"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.”

12. For the aforesaid reasons, this Court is not inclined to interfere with the order impugned in this writ petition. The writ petition is, accordingly, dismissed. Petitioner, however, shall be at liberty to file written statement giving reply to the amended plaint.

(Manoj Kumar Tiwari, J.)

Dt: 8 June, 2026

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