

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRP NO. 104 OF 2015

Sri Abdul Kalam Azad,
S/O. Late Abdul Majid,
Resident of West Bank
Road of Jagannath Dighi,
Udaipur Town, P.O. R.K.Pur,
P.S. R.K.Pur, Dist.- Gomati Tripura.

..... *petitioner.*

- *Vs* -

1. Sri Amir Hossain,
S/O. Late Michil Miah,
P.S. & P.O. R.K.Pur,
Resident of West Bank
Road of Jagannath Dighi,
Udaipur Town, P.O. R.K.Pur,
P.S. R.K.Pur, Dist- Gomati Tripura.

2. Sri Alek Hossain,
S/O. Sri Amir Hossain,
Resident of West Bank
Road of Jagannath Dighi,
Udaipur Town, P.O. R.K.Pur,
P.S. R.K.Pur, Dist- Gomati Tripura.

..... *Respondents.*

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioner : Mr. B. Banerji,
Ms. R. Majumder,
Advocate,

For the respondents : Mr.D.K.Das Choudhury,
Advocate,

Date of hearing & delivery
of Judgment & order : **18.11.2015.**

Whether Fit for Reporting :

Yes	No
√	

JUDGMENT & ORDER (ORAL)

This revisional application under Article 227 of the Constitution of India is directed against order dated 13.04.2015 passed by learned Civil Judge(senior Division), Gomati District, Udaipur in case No. Civil Misc.12 of 2015, arising out of Title Suit No.06 of 2013.

2. Heard learned counsel, Mr. B. Banerji for the petitioner and learned counsel, Mr. D. K. Das Choudhury for the respondents.

3. The petitioner as plaintiff instituted Title Suit No.06 of 2013 in the Court of learned Civil Judge(Senior Division), Udaipur seeking declaration with consequential relief. The suit was filed on 23.04.2013. The defendants filed their written statement on 17.06.2013. Thereafter in due course issues were framed and the plaintiff adduced evidence. Evidence of the plaintiff was closed on 10.12.2014. On 26.02.2015, the defendant No.1, i.e., respondent No.1 herein, filed an application under Order VI Rule 17 of the CPC seeking amendment of the written statement and that amendment was allowed by impugned order dated 13.04.2015.

4. It is submitted by Mr. Banerji, learned counsel for the petitioner that since trial has already commenced and evidence has already been recorded, the trial Court would not allow the amendment, without coming to a conclusion that in spite of due diligence the defendant could not plead those facts in the written

statement at the time when the written statement was filed or immediately thereafter before trial was commenced. He has also submitted that no reason at all has been assigned in the petition for amendment as to why those facts, which the defendant-respondent now proposed to add in the pleading, could not be stated at the appropriate stage. In support of his contention, Mr. Banerji has referred the case of **Mashyak Grihnirman Sahkari Sanstha Maryadit V. Usman Habib Dhuka & ors.**, reported in **2013 (3) Civil LJ 709**, wherein the Apex Court in para-6 and 7 of the judgment has observed thus :-

"6. We have heard learned counsel appearing for both sides and have minutely gone through the pleadings of the parties and the amendment petition. From perusal of the amendment petition, it reveals that the main ground for seeking relief is that the plaintiff-respondent Nos.1 to 3 were allegedly not aware of the conveyance deed dated 08.02.1989. For better appreciation, para 32-(b) of the amendment petition is reproduced hereinbelow :-

"The Plaintiffs say that all documents were applied under RTI and some of the same were received by Plaintiffs on 2.3.2009. The Plaintiffs further say that prior thereto Plaintiffs were unaware of any such Conveyance dated 8.2.1989. The Plaintiffs further say that for the first time after going through the certified copies received under RTI Act the Plaintiffs came to know about such manipulation and forgery in he registered Conveyance dated 8.2.1989. The Plaintiffs further say that the signature of the deceased Jamal Gani Khorajia has been got forged and documents executed and registered and a signature got manipulated through some fake persons, who must have impersonated deceased Mr. Jamal Gani Khorajia. The Plaintiffs say that is the matter of common sense that when Jamal Gani Khorajia had expired on 14.8.1984 then how could he execute the said Conveyance dated 8.2.1989 after 5 years from the date of his death."

7. Prima facie the aforesaid statement made in the amendment petition is not correct. Indisputably, the plaintiff-respondent no.1 was the office-bearer of the

Society at the relevant time and by Resolution taken by the Society respondent No.1 was authorized to complete the transaction.

Hence, it is incorrect to allege that the plaintiff-respondent No.1 was not aware about the transaction of 1989. Moreover, before the institution of the suit in the year 2010, the plaintiffs allegedly came to know about the Conveyance Deed dated 8th February, 1989, sometime in the year 2009, but relief was not sought for in the plaint which was filed much later i.e. 14th October, 2010. The High Court has not considered these undisputed facts and passed the impugned order on the general principles of amendment as contained in Order VI Rule 17 of the Code of Civil Procedure. Hence we do not find any ground for allowing the amendment sought for by the plaintiffs which was not only a belated one but was clearly an after-thought for the obvious purpose to avert the inevitable consequence. The High Court has committed serious error of law in setting aside the order passed by the trial court whereby the amendment sought for was dismissed. The impugned order of the High Court cannot be sustained in law."

5. Learned counsel, Mr. Das Choudhury has submitted that the amendment sought, which has been allowed by the trial Court, is not a new fact rather it is elaboration of the fact which has already been stated in para-7 of the written statement of defendant No.1. Since it is not altogether a new fact, there is no bar in allowing the amendment.

6. Order VI Rule 17 of the CPC reads as follows :-

"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."

7. Admittedly in the present case trial has commenced and the evidence of the plaintiff has been closed. The facts, which the defendant No.1 by way of amendment sought to be impleaded in the written statement reads as follows :-

"The defendant-1-petitioner is more than 62 years old and an ailing person with little education has been suffering from diabetes Mellitus for last 28 years and hard of hearing. The plaintiff and defendant no. 2 are being respectively brother-in-law(wife's brother) and son of the plaintiff and prior to the date 25-11-11 the plaintiff approached and requested the defendant no- 1-petitioner for allowing him a passage of 2' (two feet) breadth along the southern side of the land (measuring 152' feet in length) of defendant for enabling him to lay domestic drinking water supply line. There was no scope to allow more than 2' (two feet) width passage as average space between the southern boundary line of his land and the sun shed of the dwelling building of defendant-1 standing on that land was hardly 2' (two feet) breadth,

As the defendant-1 had fiduciary, faithful and affectionate relation with the plaintiff, he agreed to concede the request. In order to avoid any future complicity plaintiff urged upon the defendant-1 to enter into a written agreement to that effect; and accordingly on 25/11/2011 he appeared in the Sub-Registry Office at Udaipur and relied on the plaintiff and believing that plaintiff would not do anything detrimental to the interest of the defendant no.1, 2 and against his direction, the defendant-1 on good faith puts signature on the pages of the agreement in question without going through the contents of it was prepared by the deed writer under the instruction of the plaintiff.

The agreement deed was registered vide no.1-886 dated 25-11-2011 (herein after referred as the questioned agreement), no copy of the same is furnished to defendant- 1 so he was ignorant about the real contents of the alleged agreement until his counsel inspected the documents filed with plaint after receipt of the summons by the defendant-1 in this suit. The plaintiff was not allowed to lay water pipe of big/3 inchi size or electric line or 6 feet width path as alleged in his plaint or alleged agreement.

After execution of said questioned agreement the defendant-1 was out of his residence for his treatment and after returning home, the defendant-1 become aware of the fact on 14-09-2012 that the plaintiff during the absence of the defendant- 1 laid a property line (pipe of big/3' inchi size) across the land

of the defendant-1 on 12-09-11, when he submitted complaint to the various authorities on 14-9-12, 27-11-12 & 29-12-12."

8. The fact which has already been pleaded in para-7 of the written statement reads as follows :-

"7) That the plaintiff was given license by the answering defendant to pass and repass through his land for the time being without any license fee and without consideration as the plaintiff is the near relative of the answering defendant and the plaintiff was never allowed to lay water supply line or electric line over the land of the answering defendant but the plaintiff with connivance with the official of Udaipur Nagar Panchayat and Public Health managed to erect pipe line on the land of the answering defendant and because series of objections to the different authorities from the answering defendant, the Public Health Authority and Udaipur Nagar Panchayat could not connect the water supply line and electric line in question with the main line and because of unauthorised activity of the plaintiff, the answering defendant revoked the license on 07.03.2013 and on & from that day agreement dated 25.11.2011 is not enforceable against the answering defendant."

9. A bare reading of the pleading, which the defendant intended to incorporate by amendment and the pleading already there in para-7 of the written statement clearly reveals that by way of amendment the defendant No.1 intended to implead some facts which the defendants did not state earlier though it was within the knowledge of the defendants that there was an agreement dated 21.11.2011 signed between the plaintiff and the defendants. So, I cannot agree with the submission of learned counsel, Mr. Das Choudhury that the facts stated in the amendment was a simple elaboration of the pleadings already made in para-7 of the written statement.

10. No doubt an amendment is permissible at any stage of a suit. But the law has prescribed that if trial has already been commenced, the Court while allowing amendment must be satisfied that the fact which the parties to the suit either plaintiff or the defendants intended to bring on record in their pleadings could not be discovered in spite of due diligence.

11. On perusal of the petition seeking amendment, I find that the defendants stated nothing at all as to what was the reason for not stating the facts, which the defendants now intended to add in their pleadings by amending the written statement. Since no reason has been assigned in the petition seeking amendment, the trial Court would not allow the amendment as sought by the defendant No.1. The provision of law should be strictly read and applied in its true spirit. The trial Court also has assigned no reason while granting the amendment. I find sufficient force in the argument advanced by learned counsel, Mr. Banerji and the ratio of the decision in the case of **Mashyak Grihnirman Sahkari Sanstha Maryadit (supra)** is applicable in the fact of the present case. A petition seeking amendment may be liberally construed, but that does not mean that it should be allowed at random without assigning any reason.

12. In view of the discussion made above, the revisional application is allowed. The order dated 13.04.2015 passed by

learned Civil Judge(Senior Division), Udaipur, Gomati District in Case No. Civil Misc.12 of 2015 allowing the amendment is set aside.

13. Send back the lower court record along with a copy of this Judgment.

JUDGE