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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 5/2022, CM APPL. 38561/2022, CM APPL. 39624/2022

LALIT MOHAN MADHAN Petitioner
Through: Mr. Gaurav Duggal, Adv.

versus

OM PRAKASH GUPTA THROUGH LRS & ORS.

..... Respondents

Through: Mr. Y.K. Gupta and Mr. U.K. Gupta R1(b) and R1(c) in person
Mr. Ashutosh Kaushik and Mr. Manish Vashisht, Advs. for DDA
Mr. Ripu Daman Bharadwaj, CGSC with
Ms. Aakrati Roy, Adv. for L&DO

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% **04.11.2022**

1. The impugned order dated 8th January 2020, passed by the learned Additional Senior Civil Judge (the learned ASCJ) in CS 1448/2018 (*Om Prakash Gupta v. Subhash Chand Goel*) allows an application under Order VI Rule 17¹ of the Code of Civil Procedure, 1908 (CPC) filed by the plaintiff in the suit, who is the respondent before this Court.

¹ 17. **Amendment of pleadings.** – The Court may at any stage of the proceedings allow either party to alter or amend his pleading 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.

2. Aggrieved thereby, the petitioner, as defendant in the suit, has approached this Court under Article 227 of the Constitution of India.

Facts

3. CS 1448/2018 (“the suit”) was instituted by the respondent Om Prakash Gupta against various defendants, of which the petitioner was Defendant 2. The suit was instituted in respect of the plot of land Plot No. 26, Street No. B/1 of Site-B, Vasant Vihar, New Delhi (“the suit property”). It was averred, in the suit, that the entire piece of land, on which the suit property was situated, was originally owned by the Ministry of Housing and Urban Development (MoHUD) who, *vide* a lease deed dated 28th May 1968, leased out the land to the Governments Servants Cooperative House Building Society (“the Society”). The lease was expressly for the purpose of sub-leasing the plot to the members of Society, subject to the conditions stipulated in the lease deed. The plaint averred that a draw of lots was conducted on 21st August 1967, pursuant to which the suit property was exclusively allotted in the name of the respondent, *vide* agreement dated 23rd June 1968 which was executed by the Society in the respondent’s favour.

4. Subsequently, a sub-lease deed, dated 29th January 1971, was executed by the Society in favour of the respondent and Subhas Chand Goel, who is Respondent 2 in the present proceedings, represented through his legal heirs.

5. The plaint further averred that, after execution of the sub-lease deed dated 29th January 1971, by mutual agreement between them,

Subhas Chand Goel occupied the western part of the suit property and the respondent retained the eastern part thereof. The respondent, thereafter, claimed to have erected certain structures on the eastern part of the suit property, in which he has been residing with his family since 1980.

6. The plaint alleged that Subhas Chand Goel was, without obtaining any sanction from municipal authorities, erecting a three storey house on his (western) portion of the suit property. Having commenced the said construction, Subhas Chand Goel, according to the plaint, left the suit property on 18th January 1996. Thereafter, alleged the plaint, the respondent noticed, on 27th January 1996, that the petitioner Lalit Mohan Madhan, who was Defendant 2 in the suit, was completing the alleged illegal construction which had been commenced by Subhas Chand Goel. On enquiries, according to the plaint, the respondent was informed by the petitioner that he had purchased the property from Subhas Chand Goel. The respondent claimed to have requested the petitioner to desist from further construction, as the building plan with respect to the premises had yet to be sanctioned by the municipal authorities. The plaint also refers to title documents in the form of power of attorney and Will whereunder Subhas Chand Goel had sought to transfer the suit property to the petitioner.

7. This, alleged the plaint, was also in violative of the covenants of the sub-lease deed dated 29th January 1971.

8. In these circumstances, the plaint asserted that the Delhi Development Authority (DDA) was under a statutory duty to

demolish the structures on the western side of the suit property, the construction of which had been commenced by Subhas Chand Goel and was allegedly being continued and sought to be completed by the petitioner. In these circumstances, the suit sought reliefs in the following terms:

“The plaintiff, therefore, respectfully prays for the grant of the following reliefs:-

- i) that the defendant no.1 and 2 be restrained from raising any further constructions on the Plot no. 26, Street No. B/1 of Site-B in the layout of Vasant Vihar, New Delhi, in the portion marked by alphabets ABPO in the site plan-Annexure-G attached herewith;
- ii) that the defendant No. 2 be restrained from taking physical possession of and from residing in the said disputed portion shown by alphabets ABPO in the site plan-Annexure-copyright annexed hereto, forming the part of the Plot No. 26, in street no. B/1 of Site-B of the layout of Vasant Vihar, New Delhi;
- iii) that the defendant No.3 be kindly directed by mandatory injunction to demolish illegal construction on the portion marked ABPO in Annexure-copyright, forming part of plot no. 26, in street no. B/1 of Site-B shown in the layout of Vasant Vihar, New Delhi;
- iv) that the defendant no. 5 be kindly restrained from giving electric connection in the disputed portion shown by ABPO in the Annexure-C forming part of Plot No. 26, in the street no. B/1 of Site-B of the layout of Vasant Vihar, New Delhi
- v) that the defendant no. 1 be directed to return the portion of plot no. 26-B/1, Vasant Vihar, New Delhi, to the plaintiff which is shown by alphabets ABPO in the site plan Annexure-C hereto;
- vi) that any other relief which this Hon’ble Court may deem fit and proper in the circumstances of the suit be kindly granted in favour of the plaintiff;
- vii) costs of the suit be also awarded to the plaintiff.”

9. The petitioner, as Defendant 2 in the suit, filed a written statement by way of response to the plaint. It was alleged, in the written statement, that the respondent and Subhas Chand Goel were joint owners of the suit property under a perpetual sub-lease granted by Respondent 7-MoHUD. In that view of the matter, the written statement alleged that the suit, which merely sought injunctive reliefs without seeking any declaration, was not maintainable and was liable to be rejected. The respondent, it was alleged, did not have any cause of action on the basis of which he alone could maintain the suit. The written statement further asserted that the suit property had already been sold by Subhas Chand Goel to the petitioner, and possession thereof handed over. On the said ground, too, the written statement alleged that the suit was liable to be dismissed.

10. During the pendency of the proceedings, Subhas Chand Goel and the petitioner filed applications under Order VII Rule 11 of the CPC, alleging that, as a co-owner in respect of the suit property, Subhas Chand Goel was entitled to deal with his part of the suit property as he chose and that the respondent had no right to interfere therewith. Under the garb of injunctive reliefs, the application alleged that the respondent was effectively seeking possession of the suit property.

11. The said application was disposed of, by the learned Civil Judge, in the following terms:

“Having given my careful consideration to the arguments advanced by the parties and also having perused the various documents placed on record by the parties before me, I am of considered view that the perusal of the plaint and the relief sought for in prayers No. 2, 4 and 5 can only be granted if the Plaintiff is able to prove his legal right and title over the property. With regard to the relief No.

1 and 3 the law is very clear and even a neighbour or a passerby has a right to approach the court stop the illegal construction. It is necessary for the Plaintiff to show his title to the property in as much as it has been repeatedly held in the vary cases by the Superior Courts that unauthorized construction in violation of the municipal bye-laws is a public nuisance and is hazardous to the public at large, hence, the question of locus-standi has been liberalized.

At this stage this court can not decide this issue with regard to the bare created under the Benami Transaction prohibition Act as it would be a mixed question of law and fact which can not be decided after leading of evidence and trial. The aspect of maintainability of the suit on the ground that it is under valued is also mixed question of law and fact and can only be decided after leading of evidence. In view of the above the following preliminary issues are framed.

1. Whether the suit of the Plaintiff has not been properly valued for the purposes of court fee and Jurisdiction being a suit for declaration and possession under the garb of permanent injunction ? (OP on parties).
2. Whether the suit of the Plaintiff is barred u/s 4 of the Benami Transaction Prohibition Act? (OPD)

The application u/o 7 rule 11 CPC is kept open to be decided at later stage. Case is listed for evidence of the defendant on preliminary issue and for arguments on application u/s 39 rule 2A for 1/10/1997.”

12. Challenging the said order dated 5th September 1997, the petitioner and Subhas Chand Goel filed Civil Revision (CR) 1004/1997 before this Court, which was disposed of by this Court *vide* the following order dated 10th May 1999:

““10-05-1999 Present: Mr. Raman Kapoor for the petitioner.
Mr. V.K. Makhija, Sr. Advocate with Mr.
Sanjay Khurana and Mr. Manjit Aggarwal
for the respondents.

CR 1004 & CM 3535/97

Learned counsel for the petitioner says that this petition can be disposed of at this stage. He says that the petitioner limits his prayer to quash the impugned order in view of the prayer No. 5 in the plaint. Prayer No. 5 in the plaint runs as follows:

1. That the defendant No. 1 be directed to return the portion of Plot no. 26-B/1, Vasant Vihar, New Delhi, to the plaintiff which is shown by alphabets ABPO in the site plan Annexure-copyright hereto:

Mr. Makhija, learned senior counsel for respondent no. has fairly conceded that liberty may be granted to file a separate suit for the relief as mentioned in prayer No. 5 of the plaint and plaintiff will not press this prayer in the present suit. Liberty is granted.

In view of the liberty granted, if question of limitation arises, the petitioner shall be entitled to raise the same before the appropriate court.

Nothing survives in this revision petition. The same is disposed of in terms of the above observation.”

13. With the undertaking, by the respondent, to file a separate suit seeking return, to the respondent, of the suit property, Mr. Duggal, learned Counsel for the petitioner, points out that the suit survived only in respect of injunctive reliefs.

14. The respondent thereafter moved an application under Order VI Rule 17 of the CPC which has come to be decided by the impugned order dated 8th January 2020. In the said application, the respondent referred to the order dated 5th September 1977 *supra* passed by the learned Senior Civil Judge of this Court, in which he had opined that the reliefs sought in prayers 2, 4 and 5 in the suit could be granted only if the respondent was able to prove his legal right and title over the suit property.

15. Towards this end, the application sought to incorporate, in the plaint, certain passages, on the basis of which the respondent sought a declaration in his favour and against the petitioner, to the effect that the petitioner was not entitled to claim any legal right, title or interest

in respect of the rear portion of the suit property. Accordingly, the following prayer clause was also sought to be added in the plaint:

“pass a decree of declaration in favour of the plaintiff and against the defendant thereby declaring that the Defendant no.2 is not entitled to claim any legal right, title or interest in respect of the rear portion of the suit property bearing no. B-1/26, Vasant Vihar, New Delhi.”

16. By the impugned order dated 8th January 2020, the learned ASCJ has allowed the aforesaid application under Order VI Rule 17 filed by the respondent. The reasoning, in that regard, is to be found in para 10 of the impugned order, which reads thus:

“10. Although, in the original plaint the title of the suit is mentioned as "suit for Permanent Injunction", however, one of the prayer was there for seeking Mandatory Injunction which makes it clear that the plaintiff had already sought the relief of mandatory injunction. Further, the plea of the plaintiff for adding a prayer of declaration is premised on the opinion of the court rendered while passing order dated 05.09.1997, the said plea appears to be reasonable as same would make the claim of the plaintiff more precise as parties have claimed joint ownership over the suit property. From the facts averred in the application, it is apparent that the proposed amendment is necessary as through incorporating the relief of declaration, the plaintiff is merely elucidating the cause more specifically as same would facilitate determination of real question between the parties effectually. The relief of declaration would not in any way alter the fundamental nature of the suit as parties claim co-ownership and in this background the relief of declaration assumes significance and same is to be necessarily decided by incorporating in the plaint. Further, the relief of declaration would also help in rendering the just decision in the facts and circumstances of the present matter. It is pertinent to mention that trial is yet to commence in the present suit and by allowing the amendment no prejudice would be caused to the defendant. It is noteworthy that the dominant purpose of amendment is to curtail multiple litigations and where the issues framed warrant evidence from the parties qua their right, title or interest in the suit property, the same should be decided in the existing litigation and parties should not be left to litigate for the said relief separately. Accordingly, application is allowed. Amended plaint is taken on record. Application disposed off.”

17. Aggrieved by the aforesaid order, the petitioner, as Defendant 2

in the suit, has invoked the jurisdiction vested in this Court by Article 227 of the Constitution of India.

18. I have heard Mr. Gaurav Duggal, learned Counsel for the petitioner, and the respondent, who appears in person, at considerable length.

19. Mr. Duggal has invited my attention, *inter-alia*, to paras 8, 12 and 14 of the plaint as well as the prayer clause therein. The prayer clause already stands reproduced hereinabove. Paras 8, 12 and 14 of the plaint read as under:

“8. That at the time of execution and registration of sub-lease by the Defendant No. 6 with regard to the aforesaid plot No. 26, the plaintiff under influence and pleadings of the family members and the defendant no. 1, included the name of the defendant no.1 also with him in the said sub-lease deed dated 29.1.1971, which was executed by the defendant no. 6 in favour of both of them, for a period of 99 years.

12. That after the execution and registration of sub-lease deed dated 29.1.1971, in favour of the plaintiff as well as the defendant no. 1 jointly the plaintiff has accommodated defendant no.1 as his brother and allowed him to take western part of the said plot as shown in the Site Plan- Annexure-B, marked by alphabets ABPO, measuring approx. 40' X 45' and for himself he retained the remaining part of the Eastern Side shown by alphabets OPCD in the said Site Plan-Annexure-B.

14. That the defendant No.1 also made incomplete construction of three storeyed house on his portion shown by Alphabets ABPO in the Plan- marked as Annexure-C hereto, but without obtaining any sanction plan from the MCD/Defendant No. 4. There are no doors except one, only few room structure is otherwise complete. No floorings, no plaster. The defendant no.1 was living in a few rooms of the said incomplete buildings since 1992 until on 18.01.1996 when he quietly left the place and shifted to 289, Tarun Enclave, Pitampura, Delhi. His constructions are shown in the area marked by Alphabets ABPO in the site plan-Annexure-C.”

20. Mr. Gaurav Duggal points out that the remaining prayers in the

plaint were dependent on prayer (v), whereunder the respondent had sought return, to the respondent, of possession of the western side of the suit property. That prayer, he points out, was given up by the respondent before this Court on 10th May 1999, in CR 1004/1997. With the abandonment of prayer of restoration of possession, Mr. Duggal submits that the suit survives only as a suit claiming injunctive reliefs. Mr. Duggal submits that a suit claiming injunctive reliefs, without any relief of possession, was itself liable to be dismissed.

21. In these circumstances, he submits that the respondent could not seek to include, in the suit, the prayer for a declaration that, even if any such prayers were included, no such relief could be granted by the Court in view of the proviso to Section 34² of the Specific Relief Act, 1993. Once the relief of possession had been given up, Mr. Duggal submits that the injunctive relief would also not survive for consideration. The allowing of the amendment sought by the respondent, submits Mr. Duggal, has caused serious prejudice to his client. Mr. Duggal places reliance, in support of his submission, on the judgment of the Supreme Court in *Padma Sundara Rao v. State of Tamil Nadu*³, specifically on para 9 thereof.

22. Answering the submission of Mr. Duggal, Mr. Y.K. Gupta, the respondent who appears in person, submits that the arguments of Mr. Mittal do not survive for consideration, as, predicated on the ground that, consequent on the abandonment of relief of possession, the suit

² 34. **Discretion of court as to declaration of status or right.** — Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

³ 2002 (3) SCC 533

instituted by the respondent would not survive *qua* the remaining injunctive reliefs, the petitioner had, in fact, moved an earlier application under Order VII Rule 11 of the CPC before the learned Civil Judge. That application was dismissed by the learned Civil Judge on 10th September 2007, against which the petitioner approached this Court by way of CRP 205/2007. By order dated 10th December 2008, a Coordinate Single Bench of this Court allowed CRP 205/2007 in the following terms:

“8. The suit filed by the respondent Om Parkash Gupta was liable to be rejected under Order 7 Rule 11 CPC, There were no issues which could be tried and the suit seems to have been filed by one brother against the other when the brother sold away his portion and moved out from the property, If any action is sought to be taken by superior lessor, the superior lessor would be free to take action as per law. Similarly, the MCD/DDA would also be free to take action against the petitioner as per law.

9. I, therefore, allow this petition. The application under Order VII Rule 11 CPC stands allowed. The suit filed by the respondent no.1 is liable to be dismissed as the same is without cause of action and is hereby dismissed.”

23. Mr. Gupta submits that, aggrieved by the aforesaid order of this Court, he had approached the Supreme Court by way of Civil Appeal 6841/2017 (*Om Prakash Gupta v. Subhash Chand Goel*). The Supreme Court disagreed with the reasoning and findings of the learned Single Judge of this Court in his judgment dated 10th December 2008 and allowed the Civil Appeal in the following terms:

“We are unable to accept the aforesaid reasoning given by the High Court in support of its conclusion. No doubt, the respondent would have rightly raised the construction on his portion, but the same is to be done in a legalised manner. When the appellant had set up a case that the building plans were not sanctioned and still wanted to raise the construction, there was a cause of action for filing the Suit and, therefore, the plaint could not have been rejected. We, thus, allow this appeal and set aside the impugned order and direct the Civil Court to decide the suit in accordance with law and on its own merits.”

24. At the time of disposal of the aforesaid Civil Appeal 6841/2017, by the Supreme Court, on 3rd April 2017, Mr. Gupta points out that his application under Order VI Rule 17 of the CPC was pending before the learned ASCJ. It cannot, therefore he submits, lie in the mouth of the petitioner, at this stage, to again rake up the issue of maintainability of the suit, once the issue had been laid to rest by the Supreme Court.

25. Insofar as the submission of Mr. Duggal that the relief of declaration could not be sought to be introduced by an amendment, as such a relief could not be granted in law in view proviso to Section 34 of the Specific Relief Act, Mr. Gupta places reliance on the judgment of the Supreme Court in *Abdul Rehman v. Mohd. Ruldu*⁴, specifically underscoring the following passages therefrom:

“13. Next, we have to see whether the proposed amendments would alter the claim/cause of action of the plaintiffs. In view of the same, we verified the averments in the un-amended plaint. As rightly pointed out by Ms. Manmeet Arora, learned counsel for the appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the un-amended plaint. We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the un-amended plaint and, therefore, the relief of cancellation of sale deeds as sought by amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. In view of the same, the contrary view expressed by the trial Court and High Court cannot be sustained. It is not in dispute that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment of the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice should (sic would) have been caused to Respondent Nos. 1-3 (Defendant Nos. 1-3 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation.”

⁴ (2012) 11 SCC 341

26. He has also relied on the decision *Vemareddi Ramaraghava Reddy and Ors. v. Konduru Seshu Reddy and Ors*⁵, emphasising para 12 of the report in that case, which reads thus:

“In our opinion Section 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the courts have power to grant such a decree independently of the requirements of the section. It follows, therefore, in the present case that the suit of the plaintiff for a declaration that the compromise decree is not binding on the deity is maintainable as falling outside the purview of Section 42 of the Specific Relief Act.”

27. Mr. Duggal, in rejoinder, sought to distinguish the judgment of the Supreme Court in *Abdul Rehman*⁴.

28. Having heard Mr. Duggal, learned Counsel for the petitioner, and the respondent who appears in person, and having considered the material on record in the light of the law that has been settled in that regard, I am of the opinion that the impugned order dated 8th January 2020 does not invite interference by this Court under Article 227 of the Constitution of India.

29. The parameters of Order VI Rule 17 of the CPC have been exhaustively delineated by several decisions of the Supreme Court including *B.K.Narayana Pillai v. Parameshwaran Pillai*⁶ and *Rajesh Kumar Aggarwal v. K.K.Modi*⁷, the most recent decision being the authoritative pronouncement in *Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd*⁸ (“LIC”, hereinafter).

30. The following passages, from *LIC*⁸ are relevant:

⁵ AIR 1967 SC 436

⁶ (2000) 1 SCC 712

⁷ (2006) 4 SCC 385

⁸ (2022) SCC OnLine SC 1128, AIR 2022 SC 4256

“19. *It is well settled that the court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really sub-serve the ultimate cause of justice and avoid further litigation. In L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.*⁹, , this Court at paragraph 16 of the said decision observed as follows:

16. It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. *But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.....”*

20. Again in *T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board*,¹⁰ this Court observed as follows:

“2.The law as regards permitting amendment to the plaint, is well settled. In *L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.*⁹ it was held that the Court would as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it.

3. It is not disputed that the appellate court has a coextensive power of the trial court. We find that the discretion exercised by the High Court in rejecting the plaint was in conformity with law.”

21. So far as the answer to the specific plea that the claim of damages is barred by limitation and cannot be permitted at this stage is concerned, it becomes necessary to examine the various judicial pronouncements of this Court. The principles governing an amendment which may be permitted even after the expiry of the statutory period of limitation were laid down by the Privy Council

⁹ AIR 1957 SC 357

¹⁰ (2004) 3 SCC 392

in its judgment in **Charan Das v. Amir Khan**¹¹. In this case, the Privy Council laid down the principles thus:

“.....That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases : see for example *Mohummud Zahoor Ali v. Rutta Koe*, where such considerations are outweighed by the special circumstances of the case, and their Lordships are not prepared to differ from the Judicial Commissioner in thinking that the present case is one.”

22. It would be useful to also notice the observations of this Court in, **Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil**¹², wherein this Court considered an objection to the amendment on the ground that the same amounted to a new case and a new cause of action. In this case, this Court laid down the principles which would govern the exercise of discretion as to whether the court ought to permit an amendment of the pleadings or not. This Court approved the observations of Batchelor, J., in the case of **Kisandas Rupchand v. Rachappa Vithoba Shilwant**¹³, when he laid down the principles thus:

“10.“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 ... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that 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. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same : can the amendment be allowed without injustice to the other side, or can it not?”

¹¹ AIR 1921 PC 50

¹² 1957 SCR 595

¹³ ILR (1909) 33 Bom 644

23. *This Court has repeatedly held that the power to allow an amendment is undoubtedly wide and may be appropriately exercised at any stage in the interests of justice, notwithstanding the law of limitation. In this behalf, in **Ganga Bai v. Vijay Kumar**¹⁴, this Court held thus:*

“22.The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court.....”

24. Again in **Ganesh Trading Co. v. Moji Ram**¹⁵, this Court laid down the principles thus:

“4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its Counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.”

25. The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defense which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favor of the plaintiff is not withdrawn. *All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defense taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. The proposed amendment should not cause such prejudice to the other*

¹⁴ (1974) 2 SCC 393

¹⁵ (1978) 2 SCC 91

*side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the application for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement. (See **South Konkan Distilleries v. Prabhakar Gajanan Naik**¹⁶)*

26. But undoubtedly, every case and every application for amendment has to be tested in the applicable facts and circumstances of the case. *As the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts, this Court has repeatedly laid down the principle that such an amendment would be allowed even after the expiry of statutory period of limitation.*

27. In this behalf, in **A.K. Gupta & Sons Ltd. v. Damodar Valley Corporation**¹⁷, this Court held thus:

*“7.a new case or a new cause of action particularly when a suit on the new case or cause of action is barred: **Weldon v. Neale**¹⁸. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation:.....”*

28. In case entitled, **G. Nagamma v. Siromanamma**¹⁹, this Court considered the proposed amendment of the plaint and noticing that neither the cause of action would change nor the relief would be materially affected, allowed the same. *This Court in this case noticed that in the plaintiff's suit for specific performance, the plaintiff was entitled to plead even inconsistent pleas and that in the present case, the plaintiffs were seeking only the alternative reliefs.* It appears that the plaintiffs had filed a suit for specific performance of an agreement of re-conveyance. By the application under Order VI Rule 17 of the CPC for amendment of the plaint, the appellants were pleading that the transactions of execution of the sale deed and obtaining a document for re-conveyance were single transactions viz. mortgage by conditional sale. They also wanted to incorporate an alternative relief to redeem the mortgage. At the end of the prayer, the plaintiff sought alternatively to grant

¹⁶ (2008) 14 SCC 632

¹⁷ AIR 1967 SC 96 : (1966) 1 SCR 796

¹⁸ [[L.R.] 19 Q.B. 394

¹⁹ (1996) 2 SCC 25

of a decree for redemption of the mortgage. This amendment was permitted by this Court.

29. In *Pankaja v. Yellappa (dead) by lrs.*²⁰, this Court held that *it was in the discretion of the court to allow an application under Order VI Rule 17 of the CPC seeking amendment of the plaint even where the relief sought to be added by amendment was allegedly barred by limitation. The Court noticed that there was no absolute rule that the amendment in such a case should not be allowed. It was pointed out that the court's discretion in this regard depends on the facts and circumstances of the case and has to be exercised on a judicial evaluation thereof. It would be apposite to notice the observations of this Court in this pronouncement in extenso. The principles were laid down by this Court thus:*

“12. So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held that the dominant purpose of allowing the amendment is to minimise the litigation, therefore, if the facts of the case so permit, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application.

13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

²⁰ (2004) 6 SCC 415

16. *This view of this Court has, since, been followed by a three-Judge Bench of this Court in the case of **T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board**¹⁰. Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice.*

18. *We think that the course adopted by this Court in **Ragu Thilak D. John case**²¹ applies appropriately to the facts of this case. The courts below have proceeded on an assumption that the amendment sought for by the appellants is ipso facto barred by the law of limitation and amounts to introduction of different relief than what the plaintiff had asked for in the original plaint. We do not agree with the courts below that the amendment sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief.”*

30. *From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.*

31. *In **Ragu Thilak D. John v. S. Rayappan**²¹, this Court also observed that where the amendment was barred by time or not, was a disputed question of fact and, therefore, that prayer for amendment could not be rejected and in that circumstances the issue of limitation can be made an issue in the suit itself like the one made by the High Court in the case on hand.*

²¹ **Ragu Thilak D. John v. S. Rayappan, (2001) 2 SCC 4**

32. In a decision in *Vishwambhar v. Laxminarayan (Dead) through Lrs*²², this Court held that the amendment though properly made cannot relate back to the date of filing of the suit, but to the date of filing of the application.

33. Again, in *Vineet Kumar v. Mangal Sain Wadhera*²³, this Court held that *if a prayer for amendment merely adds to the facts already on record, the amendment would be allowed even after the statutory period of limitation.*”

(Emphasis supplied)”

31. This Court has had occasion to cull out the principle governing the Order VI Rule 17 of the CPC, from the aforementioned decision in its decision in *Amit Bansal v. CSH Power Himoina Pvt. Ltd*²⁴. The following principles have been found, by this Court, to emerge from the said decisions:

“(i) Ordinarily, the Court is required to be liberal while dealing with a prayer for amendment. Prayers for amendment of written statements are required to be treated even more liberally than prayers for amendment of plaints.

(ii) Where the Court finds that declining the prayer for amendment would result in the applicant suffering irreparable loss or injury, the amendment should be allowed. Qua the opposite party who opposes the amendment, the Court is required to examine whether the amendment would result in irreversible injustice; else, it should be allowed.

(iii) There is no absolute bar to allowing an amendment which introduces a cause of action which is, by then, barred by time. While, ordinarily, such an amendment would be refused, the matter ultimately rests with the discretion of the Court and, if the amendment is found necessary in the interests of justice, it would be allowed. The fact that the amendment introduces a relief which, by then, is barred by time is, therefore, merely a consideration to be borne in mind by the Court.

(iv) The ultimate consideration has to be subserving of the cause of justice and avoiding multiplicity of litigation.

(v) All amendments are mandatorily required to be allowed which

²² (2001) 6 SCC 163

²³ (1984) 3 SCC 352 : AIR 1985 SC 817

²⁴ 2022 SCC OnLine Del 2950

- (a) do not work injustice to the other side, and
- (b) are necessary for determining the real questions in controversy between the parties.

It must be remembered, in this context, that Courts are ultimately required to adjudicate on the merits of the cases that come before them.

(vi) If an amendment is sought to correct an inefficiency in originally stating the case, it should be allowed. Such an error should be permitted to be rectified by amendment, so long it is not fraudulent, and the remedial steps taken in that regard do not unjustifiably injure accrued rights.

(vii) All amendments which are necessary to determine the real issue in controversy in the suit, should be allowed.

(viii) Amendments which alter or substitute the cause of action originally pleaded should not be allowed.

(ix) Amendments which seek to negate admissions of fact, or which are mutually destructive therewith, should not be allowed. On the other hand, inconsistent pleas and alternative reliefs can be permitted to be introduced by amendment.

(x) An amendment which does not set up a new case, or introduce a new cause of action, but merely amounts to incorporating a different or additional approach to the same facts, should be allowed, even after expiry of limitation.

(xi) The expression “cause of action”, in this context, does not mean “every fact which it is material to prove to entitle the plaintiff to succeed”, which is its normally understood connotation. It only means a new claim made on a new basis constituting new facts. The word “new case” has to be understood as meaning “new set of ideas”.

(xii) An amendment which seeks to introduce an additional relief, the factual basis for which already exists in the plaint as originally filed, should be allowed.

(xiii) An amendment which merely adds to the facts already pleaded should be allowed.

(xiv) Courts should not adopt a hypertechnical approach while dealing with prayers for amendment of pleadings. Technicalities of law should not be allowed to hamper administration of justice.

(xv) In this context, the Court should bear in mind the fact that its objective should be adjudicating and deciding on the competing and conflicting rights of parties, and not punishing parties for their mistakes.

(xvi) If a new cause of action arises during the pendency of a suit, and the plaintiff would be entitled to file a fresh suit based thereon,

the plaintiff should be allowed to amend the existing suit and introduce the claim by amendment. Events subsequent to the filing of the suit have, therefore, also to be borne in mind by the Court.

(xvii) The Court examining a plea of amendment is not concerned with the correctness, falsity, or merits of the case that the amendment seeks to set up. The Court should not, therefore, record any findings on the merits of the amendment, or the stand that is sought to be canvassed thereby.”

32. Viewed on the touchstone of these principles and in the backdrop of the facts of the present case, I do not find any ground having been made out to interfere with the impugned order.

33. The objection of Mr. Duggal with respect to the proviso to Order 34 of the Specific Relief Act, in my view, is not of particular relevance insofar as Order VI Rule 17 of the CPC is concerned.

34. While examining an application under Order VI Rule 17 of the CPC, the Court is not expected to enter into the merits of the amendments that are sought to be incorporated. Equally, the Court would not enter into the issue of whether the reliefs which may be sought to be incorporated by amendment have substance, or whether the party seeking amendment is likely to ultimately succeed in obtaining the said relief. In case the reliefs that the plaintiff seek to incorporate by amendment are bereft of substance, it would always be open to the defendant to so establish in trial or, if a case is made out, by way of an application under Order VII Rule 11 of the CPC.

35. In this regard, even the principle that reliefs which are barred by time cannot be allowed to be incorporated by way of amendment under Order VI Rule 17 of the CPC has also been diluted with the passage of time. The prevalent view, as is reflected in *LIC*⁸, is that

mere fact that the reliefs which are sought to be incorporated may, by the time amendment application is filed, have become time barred, is not a ground to refuse the prayer for amendment. The Court could always frame an issue in that regard and, in the event a case is therefore made out, decide the issue even as a preliminary issue. The relief, nonetheless, could be permitted to be included by way of an amendment.

36. In the facts of the present case, I am in agreement with Mr. Gupta's contention that, the petitioner having filed a specific application before the learned ASCJ under Order VII Rule 11 of the CPC, seeking dismissal of the suit on the ground that, after having given up the relief of possession, the suit could not survive merely for injunctive reliefs, and having lost in the said attempt at the level of the Supreme Court, that stand cannot now be allowed to be canvassed as a ground to challenge the impugned order passed by the learned ASCJ. The learned ASCJ has observed that the claim to ownership which the respondent sought to include by way of amendment was only in aid of the reliefs which were sought in the suit, as was also observed by his predecessor in the order dated 5th September 1997. That order having been carried up to the Supreme Court, which ruled in favour of the respondent herein, it cannot be said that the amendments that were sought to be incorporated were in any way beyond the case that the respondent had made out in the suit instituted by him. They were merely, as the learned ASCJ correctly holds, clarificatory of the stand that the respondent sought to canvas in the suit, subject, of course, to the claim of the respondent, and the case that the respondent seeks to set out in the plaint, ultimately succeeding.

37. In that view of the matter, I do not deem it necessary to enter into the merits of the issue of whether, in law, in the absence of a prayer for possession, injunctive reliefs could be granted or whether a suit, which merely seeks a declaration and injunctive reliefs, in the absence of a prayer for possession, is likely to be decreed. These are matters which have to be decided by the Court when the suit is heard.

38. Viewed thus, there is no occasion for this Court, in the present proceedings, to interfere, in exercise of its supervisory jurisdiction, with the impugned order dated 8th January 2020 passed by the learned ASCJ in CS 1448/2018.

39. Accordingly, the present petition is dismissed *in limine* with no order as to costs.

40. However, it is clarified that this Court has merely examined whether the decision of the learned ASCJ to allow the amendments that the respondent sought to incorporate in the plaint was open to interference under Article 227 of the Constitution of India. It has not examined the merits of the amendments or any of other issues of fact or law which have been canvassed before me.

41. This judgment, therefore, shall not influence the learned ASCJ in any manner in adjudicating on the controversies in issue before him in the suit.

42. Pending miscellaneous applications also stand disposed of.

C. HARI SHANKAR, J.

NOVEMBER 4, 2022

dsn