

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE BIVAS PATTANAYAK

**C.O. 1778 of 2022
CAN 2 of 2023
Smt. Sikha Samaddar & Ors.
versus
Smt. Minati Mondal & Ors.**

For the Petitioners : Mr. Rabindra Narayan Dutta, Advocate
Mr. Sibasis Ghosh, Advocate
Mr. Arkoday Mukherjee, Advocate

For the Opposite Parties : Mr. Madan Mohan Roy, Advocate

Heard on : 28.02.2023

Judgment on : 26.07.2023

Bivas Pattanayak, J. :-

1. This revisional application has been filed under Article 227 of the Constitution of India challenging Order No. 131 dated 8th April, 2022 passed by learned Civil Judge (Senior Division), 1st Court, at Barasat in Title Suit No. 265 of 1995 allowing the application of the plaintiffs-opposite parties for amendment of the plaint.

2. The brief fact of the case is that the plaintiffs-opposite parties filed a suit for partition and injunction which is registered as Title Suit No. 265 of 1995. The defendant nos. 1, 3, 6 to 10 filed written statement in the suit on 30th August, 1999. After framing of issues, the plaintiffs-opposite parties adduced evidence and it was closed on 30th October, 2019. Thereafter one Barun Kumar Mondal filed his examination-in-chief as DW1 on 12th March, 2020. On 22nd November, 2021 at the stage when

further evidence of DW1 was taken up, the plaintiffs-opposite parties filed an application under Order VI Rule 17 of the Civil Procedure Code for amendment of the plaint. The defendant nos. 6 to 10 filed their written objection against the application for amendment of the plaint filed by the plaintiffs-opposite parties. Upon considering the materials on record, the learned Trial Court allowed the application for amendment of plaint filed by the plaintiffs-opposite parties.

3. Being aggrieved by and dissatisfied with the impugned order of the learned Trial Court, defendant nos. 2, 5, 6, 7(b), 8, 9(a) and 9(b) filed the present revisional application.

4. Mr. Rabindra Narayan Dutta, learned advocate for the petitioners, submitted that the application of the plaintiffs-opposite parties for amendment of the plaint is harassing one being filed at a belated stage of trial. The provisions for amendment of pleadings under Order VI Rule 17 of the Code has been substantially amended by Civil Procedure Code (Amendment) Act, 2002 which clearly envisages that after commencement of the trial, no application for amendment shall be allowed unless it is shown that in spite of due diligence, the matter could not be raised before the commencement of trial. The plaintiffs-opposite parties, in their application for amendment of plaint, has not disclosed and/or provided any explanation for seeking amendment of plaint at a belated stage, that too, after commencement of trial. Such being the position, the impugned order of the learned Trial Court allowing the application of the plaintiffs-opposite parties for amendment of plaint is not sustainable in law and is

liable to set aside. To buttress his contention, he relied on the following decisions:

- i. ***Vidyabai and Others versus Padmalatha and Another*** reported in ***(2009) 2 SCC 409;***
- ii. ***S. Malla Reddy versus M/s. Future Builders Co-operative Housing Society & Ors.*** reported in ***2013 (3) ICC 293;***
- iii. ***Subodh Kumar Mondal versus Sarojaksha Palak & Ors.*** reported in ***2019 (4) Indian Civil Cases 809 (Cal.);***
- iv. ***Sri Sanjay Gadia & Ors. versus Mrityunjay Khara & Ors. (C.O 1261 of 2020)*** of this Court.

5. In reply to the aforesaid contentions raised on behalf of the defendants-petitioners, Mr. Madan Mohan Roy, learned advocate for plaintiffs-opposite parties, submitted that for conducting the cross-examination of the defence witness, the learned advocate on record for the plaintiffs-opposite parties consulted a senior lawyer and, during the course of discussion, it was noticed that the extent of share of some of the plaintiffs was not properly pleaded in terms of Section 14 of Hindu Succession Act, 1956. Due to the aforesaid reason and to avoid multiplicity of proceedings, the plaintiffs-opposite parties filed application for amendment of plaint for incorporating the extent of share of the plaintiffs correctly. Since the suit before the Trial Court is a partition suit, such amendment incorporating the extent of share of the plaintiffs is required for the purpose of determining the real question in controversy between the parties. In the light of his aforesaid submissions, he prayed that the impugned order of

the learned Trial Court under challenge should be affirmed in the interest of justice.

6. While deciding the issue in the present revisional application whether the learned Trial Court was justified in allowing the application for amendment of plaint filed by the plaintiffs, the relevant provisions of Civil Procedure Code under Order VI Rule 17 is required to be referred to which is read as hereunder:

“R 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.”

Order VI Rule 17 of the Civil Procedure Code provides for amendment of the pleadings. The Court may at any of the proceedings allow either party to alter or amend his pleadings (including the written statement) 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 question in controversy between the parties. Proviso to Order VI Rule 17 provides 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 parties could not have raised the matter before the commencement of trial.

7. Bearing in mind the provisions of law enumerated hereinabove, let me revert to the facts involved in the case. The suit before the learned Trial Court is a partition suit for declaration of the shares of the parties in the joint property. Undisputedly, the plaintiffs-opposite parties had filed application for amendment of plaint at a stage when the trial has commenced. Now the question which needs consideration is whether in the facts and circumstances of this case amendment of plaint can be allowed even after commencement of trial. At this stage, it would be apposite to reproduce the proposed amendment sought for by the plaintiffs which reads as hereunder:

“PROPOSED AMENDMENTS

- 1. In the paragraph no. 3 after the words “Biseswar Mondal” the words “Bishakha Biswas and Ranu Bala Das” will be introduced.*
- 2. From the paragraph no. 3 of the plaint the sentence “Saila Bala got the limited interest as Hindu Women Rights to property Act, 1937, which was made absolute in the year, 1956 as per new Code.” Will be deleted.*
- 3. The paragraph no. 4 will be entirely deleted.*
- 4. The paragraph no. 5 will be renumbered as paragraph no. 4 and from the said paragraph the following sentence will be deleted-*
“It is to be mentioned that Narayan Chndra Mondal had two daughters viz. Bishakha Biswas and Renu Bala Das, though they originally did not inherit after the demise of Purna Chandra Mondal, but after the death of Saila Bala Mondal, who died in the year,

1981 Saila Bala's half share were divided into three parts, one went to Bisweswar's heirs and the other two parts went to heirs of Bishakha and heirs of Renu Bala Das."

5. *In paragraph no. 5 the share "1/6th" and 2/3" as mentioned will be replaced by "1/3rd".*
6. *From the paragraph no. 7 the words "8 annas" will be deleted.*
7. *In the prayer no. (a) the share mentioned as "1/6th" will be replaced by "1/3rd".*

Thus, the proposed amendment as sought for by the plaintiffs-opposite parties relates to extent of share of the plaintiffs in the joint property. The plaintiffs-opposite parties have taken the ground that, due to misconception of law, the share of the plaintiffs-opposite parties in the suit property was not properly pleaded.

8. From the decision of Hon'ble Supreme Court in ***Nitaben Dinesh Patel versus Dinesh Dahyabhai Patel*** reported in **2022 (1) ICC 79 (SC)**, which is also relied upon by the learned Trial Judge, it is found that after considering several decisions of the Hon'ble Court including *Vidyabai (supra)* the Hon'ble Court has observed as follows.

"7.....The proviso to Order VI Rule 17 CPC 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. Therefore, if some facts have come to the knowledge subsequently and subsequent to the commencement of trial, may be during the course of trial and if it is found that it is necessary for the purpose of determining the real questions in controversy between

the parties, on a fair reading of Order VI Rule 17 CPC, such an application for amendment can be allowed even after the trial has commenced.....”

9. This Court in **Ajay Kumar Paul & Anr. versus Sushil Kumar Sah & Ors.** reported in **(2013) 1 CLJ 10** has held as follows:

“5. Ordinarily, as the proviso to Order 6 Rule 17 mandates, an application for amendment of pleadings should not be entertained—and far less allowed—for the mere asking if it is brought at a belated stage, especially if the trial has commenced. But the proviso does not create an insurmountable bar in all circumstances; it only makes the more liberal approach adopted under 2002 Amendment to the Code as to the amendment of pleadings stricter in case of a belated application. There is no doubt that the tests still continue to be as to whether the amendment would be in the interest of justice and as to whether the real controversies between the parties can be determined upon the amendment being taken on record. The other considerations that have been judicially recognized are, inter alia, as to whether the nature and character of the claim or defence, as the case may be, is sought to be altered; whether a case originally run or an admission made is endeavoured to be detracted from; and, whether a valuable right accrued to the other party is attempted to be put at nought or diluted.”

The proposition of law advanced by the learned advocate for defendants-petitioners relying on *Vidyabai (supra)*, *S. Malla Reddy (supra)*, *Subodh Kumar Mondal (supra)* and *Sri Sanjay Gadia (supra)* though lays down the precondition that prior to allowing amendment application after commencement of trial the Court should be satisfied that, in spite of due

diligence, party could not introduce such amendment before the trial has commenced, however, bearing in mind the observation of the Hon'ble Supreme Court in *Nitaben (supra)* respondent hereinabove and of this Court in *Ajay Paul (supra)* the proviso does not create any insurmountable bar in allowing application for amendment. While dealing with an application for amendment there is no doubt that the tests still continue to be as to whether the amendment would be in the interest of justice and as to whether the real controversies between the parties can be determined upon the amendment being taken on record. From the materials on record, it is not in doubt that the application for amendment of the plaint filed by the plaintiffs-opposite parties relates to incorporation of extent of share of the plaintiffs in the joint property and the suit being a partition suit such aspect is very much necessary for the purpose of determining the real question in controversy between the parties. In view of the above discussion, I do not find any impropriety in the order of the learned Trial Judge allowing the application of the plaintiffs-opposite parties for amendment.

10. Accordingly, the Civil Revisional application being **C.O. 1778 of 2022** stands dismissed. The impugned order of the learned Trial Court is affirmed. No order as to costs.

11. All connected applications, if any, stand disposed of.

12. Interim order, if any, stands vacated.

13. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)