

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CO 798 OF 2025

MANOJ KUMAR MEHARIA

VS

NETAI BHATTACHARYA AND ORS

For the Petitioner : Ms. Shebatee Datta, Adv.

Ms. Poulami Roy, Adv.

For the Opposite

Parties

: Mr. Tapas Chatterjee, Adv.

Mr. Sabyasachi Chatterjee, Adv

Mr. Akashdeep Mukherjee, Adv.

Last heard on : 11.07.2025

Judgement on : 24.07.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This revisional application under Article 227 of the Constitution of India is directed against an order dated January 8, 2025 passed by the Court of Learned Civil Judge 5th Court, Howrah in Title suit No. 1415 of 2018 allowing the application filed by the plaintiff/ Respondent herein under Order 6 Rule 17 read with 151 of CPC stands allowed with a cost of ₹500. The learned Court also rejected the application under order XI Rule 1 CPC by the same order but the order allowing the application for amendment is under challenge before this Court.

- 2.** It appears from the materials on record that the Opposite Parties herein filed a suit for declaration of title and permanent injunction against the present petitioner as well as the Opposite Parties which was registered as Title suit No.1415 of 2018. Vide an order dated November 29, 2018 an order of ad-interim injunction was allowed by the learned Trial Judge, restraining the defendants from changing the nature and character of the suit property. The defendant number 1/present petitioner entered appearance and filed written statement on September 1, 2023, denying the case as laid down in the plaint and claimed to be the absolute owners of the suit property by dint of registered deed of sale dated June 17, 1997 along with defendant No 2 and also that they have mutated their names in the Record of Howrah Municipal Corporation. The plaintiff thereafter filed the application under Order 6 Rule 17 of CPC for amendment of the plaint in order to challenge the said Deed of Sale dated June 17, 1997.
- 3.** The written objection was filed challenging the contents of the said application, and also that in order to avoid limitation in taking any legal recourse which was executed way back in the year 1997, under the garb of amendment of plaint the plaintiffs tried to create a new cause of action which if allowed would change the basic nature and character of the suit. The learned Court after hearing, both the parties allowed such application with the observation that it is necessary for the purpose of determining the real questions in controversy.
- 4.** The Learned Advocate, appearing on behalf of the petitioner Defendant No.1 argued that nowhere in the application filed under Order 6 Rule 17 of the Code of Civil Procedure, a single line was averred to establish that they had no knowledge about the execution of the said deed of 1997 and despite due

diligence, they could not bring the fact into the plaint and thereby it is essential for the purpose of proper adjudication to incorporate such fact. On the contrary the plaintiffs /Opposite Parties filed the application under Order 39 Rules 1 & 2 of the CPC where they mentioned about their knowledge about the mutation of "A" schedule property in the name of defendants no.1 & 2 being sons of defendants No 3 and submitted necessary documents but they did not file the amendment application during that time nor disclosed about the source of knowledge but filed the amendment application in the year 2024. It is further argued that the learned Court has failed to consider this aspect of the matter and presumed that the plaintiffs/Opposite Parties came to learn about the Deed from the written statement, hence the order is liable to be set aside. It is further contended that the application for amendment was taken out after the Hon'ble High Court passed the order of expeditious disposal of the suit only to delay the proceeding. The learned advocate has relied upon a decision reported in¹ **Revajeetu builders, and developers vs Narayananswamy and sons**, and others in support of her contention.

5. Learned Advocate, appearing on behalf of the Opposite Parties on the other hand raises a strong objection regarding the objection assailed before this Court on the point of limitation and the necessity to file the amendment application. It is submitted that the defendant/petitioner in their written statement stated that they became the absolute owners in respect of the land, measuring about 1 cottah 6 Chittak 10 ft.² with Mokarari Mourashi interest with old pucca two storied building and other structures, etc. by virtue of a registered deed dated 17 June 1997 from Ravi Banerjee and Bina Pani Devi,

¹ (2009) 10 Supreme Court Cases 84

the original owner who purchased the property by a Registered Deed of conveyance dated 25.1.1026 during her life time and executed a registered Will, and Testament in favour of her only son, Amiyo Kumar Banerjee, that is the father of the vendor of the defendant number 1 and her granddaughter that is plaintiff here in under certain terms and conditions as mentioned in the Will. In terms of the Will said Amiya Kumar Banerjee and Smt. Mayarani Bhattacharya desired that during their lifetime would have no right to sell and to transfer the properties, but the son and wife of said Amiya Kumar Banerjee in order to maintain their family expenses and for their livelihood could sell one of the properties as advice of the said executor, otherwise after demise of Amiyo Kumar Banerjee and Maya Rani Bhattacharjee, the plaintiff and their legal heirs by way of inheritance would inherit the said property equally and absolutely, and they would have absolute right title and interest to dispose of, transfer and enjoy according to the will. The executor of the Will have not taken any step for probate of the said Will. The plaintiff filed application before the court of learned District, Judge, Howrah, praying for letters of Administration, and Ravi Banerjee, the vendor of defendant number 1 and 2 was added as party in the case as petitioner no. 2 and took all steps for taking letters of administration of the Will and after a contested hearing granted the L.O.A in favour of Ravi Banerjee and said Ravi Banerjee disposed of the landed property to the defendant in the year 1997.

6. The plaintiffs took out the application thereafter under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure for amendment of the plaint by incorporating the facts as mentioned in the written statement and for that purpose, the relevant parts of the written statement was reproduced in the

application for amendment and hence, the learned court was absolutely right in allowing such prayer in favour of the plaintiffs. Furthermore the proposed amendment will not change the nature and character of the suit. Reliance has been put on a decision reported in² ***Life Insurance Corporation of India versus Sanjeev builders Private Ltd and others*** and ***Rajesh Kumar Agarwala & ors vs K.K. Modi & ors.***

7. In the decision reported in³ ***Reevajitu builders and developers (supra)*** the Hon'ble Supreme Court, discussed the exercise of the discretionary power of the courts while dealing with the application for amendment. The basic test was whether the amendment is necessary for determination of real question in controversy or for proper and effective adjudication of the case and the Hon'ble Supreme Court decided the factors to be taken into consideration while dealing with applications for amendment in paragraph 63 of the said judgement which is as follows:-

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;

² 2022 (4) Indian Civil Cases 645 (SC)

³ (2009) 10 Supreme Court Cases 84

- 5) *Whether the proposed amendment constitutionally or fundamental 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.

8. In the decision of ⁴*life Insurance Corporation of India vs Sanjeev Builders*

Private Ltd and others (supra) as relied upon by the learned advocate of the Opposite Parties the final observation given by the Hon'ble Supreme Court taking note of several judicial pronouncement at para 70 set out the observations where it was observed inter alia that

(ii) *'all the 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 CPC.'* It was further held that the prayer for amendment is to be allowed,

(i) *if the amendment is required for the effective and proper adjudication of the controversy between the parties, and*
(ii) *to avoid multiplicity of proceedings, provided (a) the amendment does not result injustice to the other side,*

(b) by the amendment ,the parties seeking amendment does not seek to withdrew any clear admission made by the party which confers a right on the other side ,and

(c) the amendment does no raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations)

⁴ 2022(4) Indian Civil Cases 654 (SC)

9. In the instant case, the suit was filed for declaration that the plaintiffs have right, title, and interest and possession in respect of the property i.e “A” schedule property and also that the defendant No.1 & 2 have had no manner of right, title, interest, and possession over the “A” schedule property. The further declaration prayed that the purported mutation of the B schedule property issued by defendant No.4 & 5 in favour of defendant no.1 & 2 is invalid, fraudulent, in-operative on account of undue influence and void ab-initio and not binding upon the plaintiff and has no value in the eye of law. The plaintiff wanted to incorporate by filing that application for amendment, which are, the defendant No.1 & 2 are not absolute owners in respect of the B schedule property by virtue of registered indenture dated 17.6.1997 from Ravi Banerjee. Further, that that all that piece and parcel of bastu land, which was transferred by way of registered indenture dated 17.6.97 in favour of defendant No. 1 & 2 is void, illegal and not binding upon the plaintiffs and has no value in the eye of law.

10. The plaintiffs/Opposite Parties also wanted to add in the prayer portion of the plaint that for further decree of declaration that all “that piece and parcel of bastu land measuring more or less 1 cottah 6 chittacks 10 sq. ft along with structure. Ravi Banerjee, transferred by way of registered indenture dated 17.6.97 is void and not binding upon the plaintiffs and defendant no.1 & 2 and they have not acquired any right title over the suit property by virtue of the said deed dated 17.06.1997 from Ravi Banerjee, which is described in schedule C. So from the above nature of proposed amendment which were intended to be incorporated, no such materials can be found which would in a

way change the basic nature of the suit. So basically, the plaintiff wanted to exert their right title and interest in respect of A, B and C schedule property.

This Court is unable to accept the contention of the Learned Advocate of the petitioner that the plaintiff by filing this amendment is trying to incorporate the time barred claim to declare the deed of 1997 as void when the limitation for filing a suit for declaration of Title suit is three years as per Article 58 of the limitation Act because in the written statement the execution of the deed was disclosed and immediately thereafter the plaintiff/Opposite Parties filed the application for amendment. More so in the application filed under order 39 Rules 1 & 2 of the Code of Civil Procedure the Opposite Parties/plaintiffs challenged the mutation of the names of the petitioners but no whisper was made about the execution of deed and unless the evidence is adduced the court cannot presume that the plaintiffs had the prior knowledge of the same. In the decision of⁵ **Rajesgh Kumar Agarwal versus K.K. Modi & ors** cited by the Learned Advocate for the Opposite Party it was specifically observed by the Hon'ble Supreme Court that the court must not go into the correctness or falsity of the case in the amendment. Therefore it would not be proper to enter into the merit of the case in order to assess as to whether the plaintiff has said correct statement about their knowledge of the alleged Deed or not. The carriage of proceeding lies with the plaintiff and the case has to be proved by adducing evidence in course of trial.

11. In view of the observation of the Hon'ble Supreme Court in the decisions as mentioned above the Court must be liberal while dealing with application for amendment and the technical issues should not be the ground for not allowing

⁵ AIR 2006 Supreme Court 1647

the prayer for amendment. Therefore, this Court finds no reason to interfere with the order passed by the court whereby the amendment has been allowed. However, it is not denied that the plaintiffs while filing such amendment application should have mentioned clearly about his knowledge about the execution of the deed but that laches on the part of the plaintiffs should not be the ground to refuse the prayer for an amendment, which is otherwise necessary for the proper adjudication of the real dispute in question in the suit between the parties.

- 12.** Hence, this revisional application has got no merit and is dismissed.
- 13.** No order as to costs.
- 14.** The Order passed by the Learned Civil Judge (Junior Division) 5th Court, at Howrah, is hereby affirmed.
- 15.** Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS,J.)