

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CO 1240 OF 2024

LAXMI RANI DAS AND ANR.

VS

ANJALI DAS AND ANR.

**For the Petitioner : Mrs. Pramiti Bandopadhyay, Adv.
Mr. Rahul Kumar Singh, Adv.
Mr. Md. Danish Rarooqui, Adv.**

**For the Opposite Parties : Mr. Ayan Banerjee, Adv.
Ms. Debasree Dhamal, Adv.
Ms. Riya Ghosh, Adv.**

Last heard on : 18.08.2025

Judgement on : 03.11.2025

Uploaded on : 03.11.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This is an application filed under Article 227 of the Constitution of India against an order dated 18th January, 2024 passed by the Learned Civil Judge Junior Division at Sealdah in Title Suit no. 33 of 2002 where the Learned Court has allowed the application for amendment filed by the defendant Opposite Party herein.

2. The fact of the case of the petitioner in a nutshell is that the plaintiff Prashant Kumar Das filed a suit against the present petitioner for the recovery of the suit property praying for damage of mean profits of ₹4000 per month from the date of filing of the suit and denial of title of the owner/licensor on 13.9.2000 till the filing of the plaint and further mean profits under Order 20 Rule 12 of Code of Civil Procedure. The tentative claim of the plaintiff is ₹64,000 as damages or profit. It was alleged that the plaintiff became the absolute owner of premises No. 102, Ananda Pali Road, Calcutta, 14 by virtue of a deed of gift executed by his mother late Chhaya Lata Das on 13.8.19 73. During the lifetime of said Chhaya Lata Das and her husband the defendant was a licensee under them and after the deed of gift by the mother, the defendant continued to reside in the suit property as licensee under the plaintiff who later became the owner of the suit property. After demise of said Chhaya Lata Das on 17.2.96, the defendant continued to reside in the same property which consisted of the entire second floor with two bedrooms with kitchen, bath cum privy, Verandah, described by the plaintiff in the schedule of the plaint. It was agreed that the defendant would vacate the suit property by June 20, 2000. Instead of vacating he filed a suit claiming the property as a joint family property .The plaintiff/petitioners revoked the license and thereafter he filed this suit.

3. The Opposite Party /defendant filed an amendment application for amending the Paragraph 19 of the written statement. The Learned Court after hearing the parties considered that in connection with a partition suit filed by Prashant Kumar Das in respect of the same suit property, a decree was passed whereby it was declared that the plaintiff and the defendant have equal share

over the schedule a property and on appeal before the High Court at Calcutta, it was held that the disputed deed of gift is a registered document and it contains a clear and ambiguous declaration of total divestment of property. A registered document carries with its presumption that it was validly executed and the party questioning the genuineness of the transaction is to show that in law, the transaction was not valid. The plaintiff has failed to establish such invalidity and in the factual matrix and the evidence standard by the parties, it is improbable to suggest that the plaintiff being the resident of the schedule property since his birth had no knowledge about the execution of the gifted in the year 1973 till 25.9.2000.

4. Accordingly, it was observed by the learned Trial Court that the right of the parties has been settled in the partition suit as well as by the Hon'ble Court, but for proper adjudication of the dispute, the proposed amendment was allowed being formal in nature and it would not change the nature and character of the suit. Being aggrieved thereby the Plaintiff of that suit has come up before this Court with a prayer to setting aside the said order.
5. The stand taken by the Learned Advocate appearing on behalf of the petitioner that long after 19 years, the amendment application was filed without assigning any reason for such inordinate delay and or that despite due diligence, the defendant failed to incorporate such fact in the written statement hence, therefore hit by the proviso clause of Order 6 Rule 17 of the Code of Civil Procedure and is not maintainable. It is further submitted that by virtue of the decree passed in the partition suit, subsequently affirmed in appeal, the right of the parties has been well, established and the deed of gift was executed on 18th of August 73. This is not a case that on account of any subsequent

development such amendment became necessary rather it was well within the knowledge of the defendant/opposite party herein. He further relied upon the decision reported in ***Vidya Bai and others versus Padam Lata and ors***¹. and further rely on the case of ***Ajendra Prasadji N. Pandey and Anr vs Swami Keshav Prakesh Dasji and ors***² in this regard.

6. The Learned Advocate representing the Opposite Party on the other hand raises vehement objection and submits that such amendment application never intended to change the nature and character of the said suit filed by the petitioner/plaintiff and it is settled proposition of law that the Court must take a lenient approach while considering the application filed for amendment of written statement and therefore the Learned Court was right in allowing such prayer which will not prejudice the plaintiff in any manner. It is further contended that delay of 19 years should not be an issue since the delay was not on the part of the Opposite Party. It is argued that the suit was decreed ex-parte on 21st of September 2021 as no notice was served upon them and thereafter, when the matter was restored and fixed for peremptory hearing the application for amendment was filed without any delay, therefore the period starting from the initiation of proceeding should not be considered. It is his further contention that O.P. had sufficient cause to be prevented from appearing before the Court.

7. The judgements relied upon by the learned Counsel are as follows;

¹ (2009) 2 SCC 409

² (2006) 12 Supreme Court Cases 1

Life Insurance Corporation of India versus Sanjeev Builders Private Limited and Another³, , Dinesh Goyal @ Pappu versus Suman Agarwal (Bindal) and ors⁴. , Usha Balasheb Swami and ors versus Kiran Appaso Swami and others⁵, Sri Ishwar Radha Bihari Jew and Sri Sri Ishan Salgram Jew represented by Basu Das versus Malti P. Soni passed in⁶

8. Heard the submissions of the Learned Advocates. The main thrust of the case stands on the point as to whether the amendment as filed by the present Opposite Party can be considered when the application is devoid of any reason of inordinate delay in filing the same specially when no new fact has emerged after the trial commenced. Fact remains that the amendment application was taken out after the trial commenced and evidence started. The contention of the petitioner in this case is that the Learned Trial Court considered that the deed of gift has been affirmed by the Division Bench of this Court with the observation that the deed of gift is a registered one and it contains clear and an ambiguous declaration of total divestment of property in favour of Sushant Kumar Das Further it was registered document carries with the presumption that it was validly executed and is a valid document and that it is a settled issue that the predecessor in interest of the petitioner are the sole and absolute owner of the said property and no appeal was preferred from the order of the division bench passed on 29 August 2016, by the Opposite Party and the issue, which is the subject matter of the eviction suit stands decided.

³ (2022) 16 SCC 1

⁴ 2024 SCC Online SC 2615

⁵ (2007) 5 SCC 602

⁶ CO 2868 of 2017

Despite such observation allowed the amendment in entering into the merit of the case which is not permissible.

9. In the decision of ***Life Insurance Corporation of India (supra)*** in connection with a suit for specific performance it was held that where the amendment is sought before commencement of trial, the Court is required to be liberal in its approach, bearing in mind that the opposite party would have a chance to meet the case set up in the amendment. It was further held that where the amendment does not result in irreparable prejudice to the opposite party, or divers the Opposite Party of an advantage which it had secured as a result of an admission by the party seeking amendment, such prayer is to be allowed and also equally whether the amendment is necessary for the purpose of effective adjudication on the main issues in controversy between the parties. In this case, the amendment was sought for in connection with the plaint.

10. In the decision of ***Dinesh Goyal @ Pappu (Supra)*** it was held by the Supreme Court where the application was filed to amend the plaint, this it is the settled rule that the court should adopt a liberal approach in granting leave to amend pleadings. The same cannot be in contravention of statutory boundaries placed on such power. It was further observed in this decision that

“any and all delays in judicial process should be avoided and minimise to the largest extent possible and should generally be, and rightly frowned upon. However, not in all cases can delay determine the fate of a suit. The provision was incorporated with an aim to prevent multiplicity or

multiple avenues of litigation, subsumed under the umbrella of one dispute”.

11. In the decision of ***Usha, Balasaheb, Swami and others (Supra)*** it was observed that

“from a bare perusal of Order 6 Rule 17 CPC, it is clear that the court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The Court should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side on the ground that the prayer for amendment was not a bona fide one.”

In this case, the amendment application was for written statement the Hon’ble Supreme Court in paragraph 19 observed;

Para 19. “It is equally well settled principal that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footing. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim Applies to amendment to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, in addition

of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting, a new cause of action in the plaint may be objectionable.”

It was further observed the Courts are to be more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case. **(see B.K Narayana Pillai V. Parameshwaran Pillai⁷ and Baldev Singh versus Manohar Singh⁸,**

12. In the decision passed in C.O No. 2868 of 2017, the Division of this Court discussed about the provision introduced in Order 6 Rule 17 of the Code of Civil Procedure 1908 with effect from 2002. In paragraph 9 of the said judgement it was further held that,

“The effect of the proviso may also be seen from another perspective. If an additional ground in support of the claim or an additional ground of defence was available, but had been omitted to be included in the original pleadings, the commencement of the trial would rule out its incorporation with standing the prejudice that a party suffers as a result of such omission. In a matter of speaking, the underlined principle of constructive res judicata has been introduced with almost no discretion to the court, whatever maybe the consequences. It is, in such sense that the amendment

⁷ (2000) 1 SCC 712

⁸ 1995 Supp (3) SCC 179

demands a higher sense of accountability from both the litigants and their lawyers. Also, on the face of the provision, such principle of constructive res judicata is to operate at the stage of the commencement of the trial and not upon the contention of the lis as is ordinarily the accepted position”.

13. In the instant case, the suit was filed in the year 2002 by the present Opposite Party for eviction and mean profit as the Opposite Party refused to vacate the suit premises. The written statement was filed in the year 2005. Meantime the title suit filed for partition being T.S no. 151 of 2000 was decreed in part holding that the present Opposite Party being the plaintiff of the suit was not entitled to a decree of partition in respect of the disputed property and the said judgement and decree dated 9.12.2011 was affirmed by the Division Bench of this Court and it was not challenged further. The trial commenced on 14.3.2022 and P.W.1, Sujith Kumar Das used evidence. The application for amendment was on 23rd of June 2022, which means clearly after the trial has commenced and much after the order to recall ex-parte order was passed the application was filed. Nothing can be found from the application for amendment as to why after commencement of trial, such amendment was required to be incorporated. It was not a case where an additional ground which was omitted earlier is to be incorporated. The proposed schedule of amendment clearly depicts that the petitioner wanted to incorporate that the construction was made from the own fund of the defendant in the year 1962, and therefore the plaintiff had no right title and interest over the second and third floor. Therefore, it cannot be said that any

subsequent development took place for which such amendment was necessary. Considering the decisions as discussed and the law lay down in this regard, it is disputed that the court is to approach liberally while considering an application for amendment, specially in case of amendment of the written statement, but the proviso clause should be satisfied while taking out such application. The suit is for recovery of possession where by the present petitioner is described is in permissive possession. The learned Court entered into the merit of the case while dealing with the amendment application and expressed his opinion about the maintainability of the suit which this court is unable to agree.

14. In this case, the learned court discussed the observation made by the Division bench when such fact was never incorporated in the application filed for amendment of written statement. The carriage of proceeding lies with the plaintiff and it is the plaintiff to prove his own case, by adducing proper evidence which is to be controverted by the defendant by filing their written statement and that has been followed by the defendant by filing their written statement. The Petition filed under Order 6 Rule 17 of the Code of Civil Procedure is absolutely silent to put a single word regarding the decree passed in the partition or the consequences there in which necessitated the amendment of written statement.

15. It is pertinent to mention here that by reason of the amendment of Code of Civil Procedure in the year 2002, Parliament inserted the proviso to Order 6 Rule 17 of the Court which read as under:-

‘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.’

In the decision of **Vidya Bhai versus Padam Lata (Supra)** it was held that this provide a clause couched in a mandatory form. The Court’s jurisdiction to allow such an application is taken away unless the conditions precedents therefore are satisfied. It must come to a conclusion that in spite of due diligence, the parties would not have raised the matter before the commencement of the trial.

16. In the instant case from the order passed by the Learned Trial Judge, it is evident that the said condition was not fulfilled and the question and the order passed by the Learned Trial Court also is silent on this issue. Moreover after the examination in chief has started there remains hardly any scope to take the stand that the trial has not yet commenced. The observation of the Hon’ble Supreme Court in the aforesaid case was that the date on which the issues are framed is the date of first hearing and filing of an affidavit in lieu of examination in chief of the witness, would amount to commencement of proceedings. In our case, not only the affidavit in chief was filed but the examination in chief resumed on the next date.

17. The observation of the Hon’ble Court in Paragraph 19 of the decision of **Padamlatha (supra)** where it was held that it is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real

dispute between the parties. Only if such a condition is fulfilled, the amendment is said to be allowed. However, proviso so appended to Order 6 Rule 17 of the Code restrict the power of the Court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing the Court will have no jurisdiction at all to allow the amendment of plaint.

18. Therefore, in absence of any explanation regarding the inordinate delay in filing the application for amendment of written statement which manifests absence due diligence , filed after the commencement of trial and after the evidence of P.W.1 started when it is evident that the facts were within the knowledge of the present Opposite Party , this Court is unable to accept the views of the learned court in allowing the prayer of the defendant only considering the reason of not changing the nature and character of the suit property. Furthermore the proposed amendment are not of that nature which are necessary for proper adjudication of the case and therefore the order passed by the learned Trial Court is liable to be set aside.

19. The instant revisional application stand allowed.

20. In view of the above all other connected applications are hereby disposed of.

21. The order passed by the learned Trial Court is here by set aside.

22. Let a copy of this order along with the TCR, if any be returned to the concerned Court immediately.

23. The urgent certified copy, if applied by any of the parties be supplied at an earliest, subject to fulfilment of all required formalities.

(CHAITALI CHATTERJEE DAS,J)

