

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 2610 of 2025

Pradip Kumar Ganeriwala & Ors.

Vs.

Manoj Kumar Ganeriwala & Ors.

For the Petitioners	: Mr. Rajeev Kumar Jain Mr. Kunal Shaw Ms. Yamini Mahawar advocates
---------------------	--

For the Opposite Party no. 1	: Mr. Sudhasatva Banerjee Mr. Aurin Chakraborty Mr. C.K. Deora ...advocates
------------------------------	--

For the Opposite Party no. 8	: Mr. Rachit Lakhmani Mr. C. Dutta ...advocates
------------------------------	---

Heard on	: 22.07.2025
----------	--------------

Judgment on	: 30.07.2025
-------------	--------------

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the defendant nos. 1, 13 and 14 and is directed against an order dated April 21, 2025 passed by the learned Civil Judge (Senior Division) Alipore in Title Suit No. 423 of 2023.

2. The opposite party no. 1 herein filed a suit for partition, accounts, perpetual injunction and for other consequential reliefs. The defendant nos. 1, 5, 6, 13 and 14 filed an application under Order VII Rule 11 of the Code of Civil Procedure praying for rejection of plaint. The opposite party no. 1 herein filed an application praying for amendment of plaint. By the order impugned, the application under Order VII Rule 11 of the Code of Civil Procedure filed by the defendant nos. 1, 5, 6, 13 and 14, stood rejected and the application under Order VI Rule 17 of the Code of Civil Procedure, filed by the plaintiff/ opposite party no. 1 herein, stood allowed.
3. Mr. Rajeev Kumar Jain, learned advocate appearing for the petitioner contended that the opposite party no. 1 herein filed the suit for partition by totally suppressing the fact that there was a family settlement and partition in the year 2008 by and between the heirs of Biswanath Ganeriwala whereby the parties had distributed, allocated, divided and demarcated their respective entitlement in the properties left behind by Biswanath Ganeriwala, since deceased. He further contended that the plaint has not been properly valued and the proper court fees have not been paid thereon. He further submitted that the learned Trial Judge lacks jurisdiction to try the instant suit as the property situated at R-154, Juhu Tara Road Ganeriwala Road, Mumbai falls beyond the territorial jurisdiction of the learned Trial Judge. He further contended that the plaint fails to disclose a cause of action and for such reason the plaint should be nipped in the bud.
4. Mr. Jain further contended that the opposite party herein sought to change the nature and character of the instant suit by way of amendment. He further contended that the opposite party no. 1 herein sought to challenge the deed of declaration and the family settlement deed of the year 2008 by way of amendment. He further contended that such a challenge to the aforesaid deed of declaration and the deed of family settlement is completely barred by the laws of limitation. He contended that the proposed amendments are not necessary for the purpose of deciding the real controversies between the parties in the said suit. Mr. Jain placed reliance

on the decision of the Hon'ble Supreme Court in ***Revajeetu Builders and Developers v. Narayanaswamy and Sons and others*** reported at **(2009) 10 SCC 84** in order to highlight the basic principles which ought to be taken into consideration while allowing or rejecting the application for amendment. Mr. Jain further contended that the opposite party no. 1 is trying to make out a new case by way of an amendment which is not permissible in law and in support of such contention he placed reliance upon an order passed by this Court on February 20, 2025 in CO 571 of 2025 in the case of ***Pradipta Chakraborty vs. Sanjib Sabui and Ors.*** He concluded by submitting that the proposed amendments ought to have been rejected by the learned Trial Judge.

5. Mr. Sudhasatva Banerjee learned advocate appearing for the opposite party no. 1 contended that while dealing with an application under Order VII Rule 11 of the Code of Civil Procedure the Court is only required to consider the averments made in the plaint. He further contended that the partition deed which the defendants sought to rely upon in support of their case that the opposite parties have filed the instant suit by suppressing material facts is alleged to have been executed in the year 2008 but not registered till 2022. He contended that the plaint discloses a cause of action and, therefore, the learned Trial Judge was justified in rejecting the application under Order VII Rule 11 of the Code of Civil Procedure.
6. Mr. Banerjee further contended that the proposed amendments cannot be said to be barred by limitations as the partition deed was registered only in the year 2022. He further contended that the proposed amendments are necessary for the purpose of deciding the real controversies between the parties to the suit. Mr. Banerjee placed reliance upon the decision of the Hon'ble Supreme Court in the case ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another*** reported at **(2022) 16 SCC 1** in support of his contention that all amendments are to be allowed which are necessary for determining the real question in controversy.
7. Heard the learned advocate for the parties and perused the materials placed.

8. The case as made out in the plaint is that Biswanath Ganeriwala, who died on August 3, 1994 was the Karta of the “Biswanath Ganeriwala (HUF)”. Prior to his death, the said Biswanath Ganeriwala published his last will and testament dated January 15, 1994 bequeathing his movable and immovable properties save and except the Indian Oil dealerships belonging to him to the said HUF. The probate to the said will was granted to the joint executors being the defendant nos. 1 and 2 on March 26, 1997. Upon the death of Biswanath Ganeriwala the defendant no. 1 was appointed as the Karta of the said HUF as per the directions given under the will of Biswanath Ganeriwala. It is alleged in the plaint that the defendant no. 1 taking undue advantage of his position as the Karta of the said HUF was hurriedly trying to dispose of and/or convert for his personal use the properties of the HUF and was also regularly converting the investment in the shares and securities lying in the Demat accounts and banks and financial institutions into liquid money and syphoning away the funds. Immediately upon coming to know of all the state of affairs the plaintiff called upon the defendant no. 1 to disclose the accounts pertinent to the said HUF and to let the other members also enjoy the benefits of the vast estates left by the father of the plaintiff and the defendant nos. 1 to 4 but the defendant no. 1 is not inclined at all to give any benefit of the same to any other member. The opposite party no. 1 thereafter instituted the instant suit for partition praying for a decree in preliminary form declaring the plaintiff’s one-fifth share in the properties of the HUF and for appointment of a partition commissioner to effect partition by metes and bounds making separate allotment of the shares to the plaintiff preserving the present possession and for a decree for a perpetual injunction restraining the defendant no. 1 and/or their men and agents from invading/interfering with the peaceful enjoyment, use , occupation, utilization, possession of the properties of the HUF and further restraining the defendant no. 1 from changing the nature and character of the suit schedule properties and/or from alienating the same in any manner whatsoever.

9. The defendant nos. 1, 5, 6, 13 and 14 filed an application under Order 7 Rule 11 of the Code of Civil Procedure praying for rejection of plaint. It is the specific case of the aforesaid defendants in the application under order 7 Rule 11 of the Code of Civil Procedure that the opposite party no. 1 filed the instant suit deliberately suppressing the facts that there was a family settlement and partition in the year 2008 by and between the heirs of late Biswanath Ganeriwala whereby the parties had distributed, allocated, divided and demarcated their respective entitlement in respect of the properties belonging to the Biswanath Ganeriwala (HUF). It is the further case of the said defendant that upon execution of the deed of partition, Biswanath Ganeriwala (HUF) stood dissolved and ceased to exist and the defendant no. 1 and the family members comprising of the defendant no. 1, 5 and 6 alone are the members of the Biswanath Ganeriwala (HUF) with the defendant no. 1 as the Karta and no other members of Biswanath Ganeriwala (HUF) has right, claim and entitlement therein. It has been further stated in the said application that the plaint is liable to be rejected as the plaint is written upon paper which is insufficiently stamped.
10. The opposite party no. 1 contested the application for rejection of the plaint by filing a written objection denying the material allegations contained therein.
11. The opposite party no. 1 filed an application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of plaint. It has been stated in the said application that after the instant suit was filed the defendant nos. 1, 5, 6, 13 and 14 filed the application under Order 7 Rule 11 of the Code of Civil Procedure wherein they have relied upon the documents namely –
 - (a) a copy of IGR in respect of a deed of partition and settlement dated 02.12.2008;
 - (b) the deed of partition and family settlement dated 02.12.2008 properly registered on 20.09.2023 and

(c) a deed of declaration dated 01.06.2009 purportedly executed by the said defendant as also the plaintiff.

12. After coming across the aforesaid documents the opposite party no. 1 made enquiries and it appeared to the plaintiff that fraud has been perpetrated by the defendant no. 1 in collusion and in connivance of with the defendant no. 5, 16 and 13. The opposite party no. 1 sought to incorporate the fact that fraud has been perpetrated by the said defendants as well as the particulars of the fraud.
13. The petitioners herein contested the application for amendment of plaint by filing a written objection denying the material allegations contained therein.
14. Order 7 Rule 11 of the Code of Civil Procedure states that the plaint shall be rejected in following cases :
 - (a) where it does not disclose a cause of action;
 - (b) where the relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so ;
 - (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
 - (d) where the suit appears from the statement in the plaint to be barred by any law;
 - (e) where it is not filed in duplicate;
 - (f) where the plaintiff fails to comply with the provisions of rule 9.
15. It is well settled that at the stage of dealing with the application under Order 7 Rule 11 of the Code of Civil Procedure, the Court is only required to consider the averments of the plaint.
16. It is not the case of the petitioners herein that the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by

the Court, failed to do so. It is also not the case of the petitioners that the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, failed to do so. For such reasons this Court is of the considered view that the provisions laid down under Order 7 Rule 11 (b) and (c) does not stand attracted in the case on hand. It is equally well settled that the Court while deciding an application under Order 7 Rule 11 of the Code of Civil Procedure is required to accept the statement contained in the plaint as true and correct.

17. The opposite party no. 1 claims that the properties are not partitioned and he is entitled to a share in such a property and have sought for partition of the same. Cause of action is a bundle of facts which gives right to the plaintiff to sue the defendants.
18. After reading the plaint as a whole, this Court is of the considered view that the plaint discloses a cause of action. Whether the plaintiff will ultimately succeed or not in the suit is a matter of trial.
19. In the application under Order 7 Rule 11 of the Code of Civil Procedure, the petitioners have contended that the properties belonging to Biswanath Ganeriwala (HUF) have been partitioned by a deed of family settlement and partition in the year 2008 and by virtue of which the parties had distributed, allocated, divided their respective entitlement in respect of the properties left behind by late Biswanath Ganeriwala which came to the Hindu Undivided Family by virtue of the will left by late Biswanath Ganeriwala. As to whether the property is still an unpartitioned one or the properties belonging to Biswanath Ganeriwala have been divided, allocated and demarcated between the heirs of Biswanath Ganeriwala are disputed questions of fact which requires an adjudication by trial on evidence. The same cannot be the subject matter of adjudication in an application under Order 7 Rule 11 of the Code of Civil Procedure.

20. In view of the aforesaid discussion this Court holds that the learned Trial Judge was right in rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure.
21. Now this Court shall decide as to whether the learned Trial Judge was right in allowing the application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of plaint.
22. Before entering into the factual matrix, it would be profitable to take note of the principles laid down by the Hon'ble Supreme Court to be kept in mind while dealing with the application for amendment. The Hon'ble Supreme Court in ***Revajeetu Builders and Developers (supra)*** held that the first condition which must be satisfied before the amendment can be allowed by the Court is whether such amendment is necessary for the determination of the real question in controversy and if that condition is not satisfied the amendment cannot be allowed. The Hon'ble Supreme Court considered the said condition to be the basic test which should govern the courts discretion in grant or refusal of the amendment. It was further held that the other important condition which should govern the discretion of the Court is the potentiality of prejudice which is likely to be caused to the other side. It was further observed that ordinarily, if the aforesaid is compensated by costs, then there is no injustice and the courts have very wide discretion in the matter of amendment of pleadings but the court's powers must be exercised judicially and with great care. The Hon'ble Supreme Court in paragraph 63 of the reports have laid down some basic principles which ought to be taken into consideration while allowing or rejecting the plaint for amendment which is extracted hereinafter.

“Factors to be taken into consideration while dealing with applications for amendments

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;

(5) whether the proposed amendment constitutionally or fundamentally 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.”

23. The Hon’ble Supreme Court in ***Sanjeev Builders Private Limited (supra)*** after noticing various decisions on amendments held that all amendments are to be allowed which are necessary for determining the real questions in controversy provided it does not cause injustice or prejudice to the other side. It was held that this is mandatory as is apparent from the use of the word “shall” in the later part of the Order 6 Rule 17 of the Code of Civil Procedure.

24. In paragraph 71 of the said reports the Hon’ble Supreme Court summed up the final conclusion which is extracted hereinafter.

“71. Our final conclusions may be summed up thus:

71.2. All 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 6 Rule 17CPC.

71.3. The prayer for amendment is to be allowed:

71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2. To avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

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

(c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4. *A prayer for amendment is generally required to be allowed unless:*

71.4.1. *By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.*

71.4.2. *The amendment changes the nature of the suit.*

71.4.3. *The prayer for amendment is mala fide, or*

71.4.4. *By the amendment, the other side loses a valid defence.*

71.5. *In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

71.6. *Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

71.7. *Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

71.8. *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

71.9. *Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

71.10. *Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

71.11. *Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi [Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897].)*

25. The Hon'ble Supreme Court held that the prayer for amendment has to be allowed if the amendment is required for effective and proper adjudication of the controversy between the parties and to avoid multiplicity of proceedings

provided the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable right. It was further held that the delay in applying for the amendment alone is not a ground to disallow the prayer and where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision. It was further held that whether the amendment is sought before commencement of trial, the court is required to be liberal in its approach as in such a case the opposite party would have a chance to meet the case set up in amendment.

26. Keeping in mind the aforesaid proposition of law laid down by the Hon'ble Supreme Court in the aforesaid decisions, this Court shall now proceed to consider as to whether the learned Trial Judge was right in allowing the application for amendment.
27. Proviso to Order 6 Rule 17 of the Code of Civil Procedure to some extent limits the power of the Court to allow an application for amendment after commencement of trial. However, the proviso does not stand attracted to the case on hand as the trial of the instant suit is yet to commence.
28. Record reveals that after institution of the instant suit the petitioners herein obtained a copy of the registered deed of partition, when the petitioner came to learn that no steps were taken by the defendant no. 3 for completion of registration of the deed of partition. It is not in dispute that during the pendency of the instant suit the deed of partition alleged to have been executed sometimes in the year 2008 was registered. The opposite party herein sought to incorporate the fact that the defendant no. 1 has forged the signature of the plaintiff and the defendant nos. 2 to 4 and 12 in the purported deed of declaration dated 01.06.2009 and also that the defendant no. 1 fraudulently caused registration of the abandoned deed of partition dated 02.12.2008 to be completed sometimes on or about 19.09.2023. The opposite party no. 1 sought to challenge the said deed of partition dated 02.12.2008 and the deed of declaration dated 01.06.2009 and sought to incorporate the relief that the said deed of partition and deed of declaration

are fraudulent illegal, null and void and for cancelation of the same by way of amendment.

29. Order 6 Rule 4 of the Code of Civil Procedure states that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with date and items if necessary) shall be stated in the pleading.
30. Therefore, a party pleading fraud has to state the specific particulars of such fraud.
31. Upon going through the schedule of the application for amendment this Court finds that the petitioners have sought to specifically incorporate the particulars of fraud and add further reliefs by way of amendment.
32. After going through the proposed amendments this Court is of the considered view that the same are necessary for the purpose of deciding the real controversies between the parties to the suit. The petitioners herein have sought to rely upon the deed of partition and the deed of declaration in support of their defense case and for such reason this Court holds that the allowing the proposed amendments is not likely to cause prejudice or injustice to the defendant/petitioners herein.
33. Though the petitioners alleged that the deed of partition was executed sometimes in the year 2008 but the fact remains that the registration of the said deed could not be completed till the year 2022. This Court is, therefore, of the considered view that the proposed amendment does not raise a time barred claim resulting in divesting of the other side of a valuable accrued right as registration was completed during the pendency of the instant suit. As rightly observed by the learned Trial Judge, a decree for declaration can be sought for along with the decree for partition in any suit. By no stretch of imagination it can be said that the proposed amendments will change the nature and character of the instant suit which is a suit for partition.

34. For all the reasons as aforesaid this Court is of the considered view that the learned Trial Judge was right in allowing the application for amendment of plaint.
35. In ***Pradipta Chakraborty*** (supra) it was held that by a way of proposed amendment the petitioner therein was trying to take a new line of defense which is not permissible. The said decision being distinguishable on facts cannot come to the aid of the petitioner herein.
36. To the mind of this Court the impugned order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.
37. CO 2610 of 2025 accordingly stands dismissed. There shall be, however, no order as to costs.
38. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)