

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 3100 of 2024

**Manasa Pallab & Ors.
VS.
Jagabandhu Aru & Ors.**

For the Petitioner : Mr. Kushal Chatterjee
Mr. Oishik Chatterjee
....advocates

For the Opposite Party : Mr. Debjit Mukherjee
Mr. Kaustav Bhattacharya
Ms. Priyanka Jana
.... advocates

Reserved on : 29.04.2025

Judgment on : 15.05.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the defendant nos. 1 to 6 and is directed against an order being No. 41 dated July 11, 2024 passed by the learned Civil Judge (Junior Division), 1st Court, Howrah in Title Suit No. 114 of 2022.
2. By the order impugned, the application for amendment of plaint stood allowed.
3. Opposite party no. 1 herein filed a suit being T.S. No. 114 of 2022 praying for declaration of title in respect of "A" schedule property and for a further declaration that the petitioner and the proforma opposite parties herein, who are the defendants in the suit, do not have any right to block the

common passage as described in Schedule “B” and for permanent injunction. The petitioners and the proforma Opposite parties herein are contesting the said suit by filing a Written Statement denying the material allegations contained in the plaint. The opposite party no. 1 herein filed an application for amendment of plaint and the petitioners contested such application by filing a Written Objection.

4. The learned trial judge allowed the application for amendment of plaint and some of the defendants have approached this Court challenging such order.
5. Mr. Chatterjee, learned advocate for the petitioner contended that the application for amendment of plaint was filed at the stage of cross examination of the defendant witness no. 1 and the plaintiff has not given satisfactory explanation as to why the application for amendment could not have been filed before the commencement of trial. He further contended that the facts which were incorporated by way of amendment were all within the knowledge of the opposite party no. 1 prior to the commencement of trial and, therefore, the proviso to Order VI Rule 17 of the Code of Civil Procedure (for short “the Code”) stood attracted in the case on hand. Mr. Chatterjee submitted that the subject matter of dispute in the suit is with regard to the “B” schedule common passage and the proposed amendment is beyond the scope of the instant suit. He contended that an amendment seeking to set up a new case or a new cause of action should not be allowed if the suit on new case or cause of action is barred. In support of such contention, he placed reliance upon the decision of the Hon’ble Supreme Court in **B. K. Narayana Pillai vs. Parameswaran Pillai and another reported at (2000) 1 SCC 712**. Mr. Chatterjee submitted that the doctrine of constructive notice shall apply against the plaintiff and in support of such contention he placed reliance upon the decision in the case of **Md. Noorul Hoda vs. Bili Raifunnisa and other reported at (1996) 7 SCC 767**. He contended that the facts leading to the challenge thrown to the registered instruments were within the knowledge of the plaintiff and a suit to set aside such registered deed of gift would be barred by limitation as on the

date of filing the application for amendment. He contended that without recording any finding as contemplated under proviso to Order VI Rule 17 of the Code, the learned trial judge ought not to have allowed the amendment. In support of such contention, he placed reliance upon the decision of the Hon'ble Supreme Court in ***Pandit Malhari Mahale v. Monika Pandit Mahale reported at (2020) 11 SCC 549***. Mr. Chatterjee contended that by way of amendment the plaintiff sought to introduce a totally different, new and inconsistent case which would ultimately change the fundamental character of the suit which is impermissible. In support of such contention, he placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Basavaraj vs. Indira and Others reported at (2024) 3 SCC 705***.

6. Per contra, Mr. Mukherjee, learned advocate for the opposite party no. 1 contended that the proposed amendments are necessary for the purpose of deciding the real controversy between the parties in the suit. He contended that the dominant purpose behind consideration of an amendment application is to minimize the litigation. In support of such contention, he placed reliance upon the decision of a co-ordinate bench in the case of ***Sri Sukumar Kanp & Ors. Vs. Khudiram Patra, since deceased, represented by Sri Narayan Patra & Ors. reported at 2023 SCC Online Cal 522***. Mr. Mukherjee contended that the facts which the plaintiff sought to incorporate by way of amendment came to his knowledge after the commencement of trial and the same being subsequent events, the application for amendment could not be filed at an earlier point of time. He placed reliance upon the decisions in the case of ***Nitaben Dinesh Patel vs. Dinesh Dahyabhai Patel reported at (2021) 20 SCC 210; Parshotam Lal vs. Krishan Gopal reported at (2020) 2 ICC (P& H) 580***; and an order passed by co-ordinate bench on ***05.12.2024 in C.O. 910 of 2020*** in the case of ***Samir Ghosh and Anr. Vs. Pratap Ghosh and others*** in support of his contention that an application for amendment can be allowed even after commencement of trial if some facts have come to the knowledge subsequent to the commencement of trial. Mr. Mukherjee further contended that the Court cannot enter into the merits of the case which was sought to

be set up by way of amendment at the time of deciding such application and in support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Raj Kumar Bhatia vs. Subhash Chander Bhatia reported at (2018) 2 SCC 87**. He contended that proviso to Order VI Rule 17 of the Code cannot be a bar in allowing the amendment seeking to incorporate subsequent event.

7. Heard the learned advocates for the parties and perused the materials placed.
8. To the mind of this Court, it would be beneficial to take note of the propositions of law laid down by the Hon'ble Supreme Court and High Courts on the power of the Court to allow a prayer for amendment of pleadings before entering into the factual matrix of this case.
9. The Hon'ble Supreme Court in **Revajeevu Builders and Developers vs. Narayanaswamy and sons and others reported at (2009) 10 SCC 84** in paragraph 63 of the said reports have held thus:-

“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.”

10. The Hon’ble Supreme Court in ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another reported at (2022) 16 SCC 1*** after noticing several decisions of the Hon’ble Supreme Court and High Courts held that all amendments are to be allowed which are necessary for determining the real questions in controversy provided it does not cause injustice to the other side. It was further held that use of the word “shall” in the latter part of Order VI Rule 17 of the Code makes it a mandatory one. In paragraph 71 of the said reports, the final conclusions have been summed up which are extracted hereinafter.

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

71.1. Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

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 VI Rule 17 of the CPC.

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 pinpointedly 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)”

11. After going through the aforesaid decisions, this Court is of the considered view that it is now well settled that all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right.
12. However, proviso to Order VI Rule 17 of the Code states 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.
13. Mr. Chatterjee would contend that the proviso to Order VI Rule 17 of the Code stood attracted to the case on hand as the plaintiff sought to incorporate some facts by way of amendment after commencement of trial. Mr. Mukherjee would, contend that the facts leading to the amendment came to the knowledge of the plaintiff after the commencement of trial.
14. It is not in dispute that the application for amendment of plaint was filed at the stage when the DW-1 was being cross- examined. It appears from the impugned order that during examination of DW-1, he admitted about a

Kabuliyat deed of 1941, the certified copy of which was marked as an exhibit.

15. In the original plaint, it has been stated that the predecessor-in-interest of the plaintiff namely Sital Chandra Aru got the suit property by virtue of a registered deed of partition dated 18.01.1972. The plaintiff/Opposite party no. 1 claims to have acquired right, title, interest and possession of "A" schedule property partly by inheritance and rest through a deed of gift with right to use Eastern side 4 feet wide common passage for egress and ingress which is described as "B" schedule.
16. The specific case made out by the petitioners and the proforma opposite parties in the Written Statement is that prior to the partition deed dated 18.01.1972, one of the party to the partition deed namely Ashalata Dasi, transferred 03 Sataks of land as shown in P 7 of the Partition Deed and her proportionate share of land in the common passage to the Partition Deed, in favour of the father of the defendant no. 1 by a registered deed of gift dated 23.09.1970. It has been further stated that the father of the defendant no. 1 got 3 Sataks by virtue of the deed of gift dated 23.09.1970 and 15 Chittaks by purchase deed dated 09.08.1972. It is further stated in the Written Statement that the plaintiff and his predecessor-in-interest had/has no nexus with the common passage.
17. It is the case of the opposite party no. 1 in the application for amendment that the certified copy of the registered deed of kabuliyat was filed by the defendant on 05.03.2024 and after going through the said document the plaintiff came to know for the first time that Aashalata Dasi had no right to transfer any portion of the property by way of gift, sale, mortgage etc.
18. The Opposite Party no. 1 sought to incorporate the fact of execution of a registered deed of Kabuliyat dated 05.01.1941 executed by the predecessor-in-title of the father of the defendant no. 1 in favour of the predecessor-in-interest of the plaintiff and others by way of amendment of plaint. The nature of right which the said predecessor-in-title acquired through the deed

of Kabuliyat and also whether Aashalata Dasi i.e. the predecessor-in-title of the father of the defendant no. 1 had any right to transfer by way of gift was sought to be incorporated by way of amendment. The deed of Kabuliyat was produced at the time of examination of DW-1. This Court accordingly holds that the facts sought to be incorporated by way of amendment came to the knowledge of the plaintiff subsequent to the commencement of trial. That apart the plaintiff sought to challenge the deed of gift dated 23.09.1970 on the ground that the same was executed in violation of the terms and conditions of the said registered Bemayadi Kabuliat dated 05.03.1941.

19. It is the specific defence case that the right over the common passage was transferred by way of the deed of gift. The plaintiff is also claiming right of user over the “B” schedule common passage. The real controversies between the parties to the suit revolves around the right over the common passage.
20. This Court, therefore, holds that the proposed amendments challenging the deed of gift are necessary for determining the real questions in controversy between the parties and it would enable the Court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision. The question of causing injustice or prejudice to the other side also does not arise in the case on hand as the petitioners have based their claim on the deed of gift as well as the deed of Kabuliyat.
21. The Opposite party herein prayed for declaration of title and for a declaration as to the right of user of the common passage. The facts sought to be incorporated by way of amendment are in support of the case made out in the original plaint and the reliefs claimed by way of amendment would not result in changing the nature and character of the suit as the suit would remain as a suit for declaration of title and permanent injunction.
22. This Court has to now consider whether the plaintiff sought to introduce a time barred claim by way of amendment.

23. Mr. Chatterjee strenuously argued that the claim sought to be introduced is a time barred one and placed strong reliance upon the decision in the case of ***Md. Noorul Hoda (supra)***.
24. In the said reported decision, it was held that constructive notice in equity treats a man who ought to have known a fact, as if he actually knows it. It was also observed that generally speaking, constructive notice may not be inferred unless some specific circumstances can be shown as a starting point of enquiry which if pursued would have led to the discovery of fact.
25. As to what date should be taken to be the starting point of enquiry for the purpose of applicability of the doctrine of constructive notice in the case on hand is an arguable case. The issue of limitation as raised by Mr. Chatterjee, being an arguable one, this Court is of the considered view that the amendment could be allowed and the issue of limitation be framed separately for decision.
26. The foundational basis of the amendment application, as observed hereinbefore, is the deed of Kabuliyat, the certified copy of which was exhibited at the time of cross-examination of DW-1.
27. In ***Nitaben Dinesh Patel (Supra)***, the Hon'ble Supreme Court while interpreting the proviso to Order VI Rule 17 of the Code held that if some facts have come to the knowledge subsequently and subsequent to the commencement of trial and 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.
28. The two tests laid down in the aforesaid reported decision have been fully satisfied in the instant case as would be evident from the observations made hereinbefore.

29. The decisions in the case of **Parshotam Lal (supra) and Samir Ghosh (supra)** support the view taken by this Court.
30. In the written objection to the application for amendment, the petitioner herein have raised objection on the merits of the case which was sought to be set up by the opposite party no. 1 by way of amendment. The Hon'ble Supreme Court in **Raj Kumar Bhatia (supra)** held that it is impermissible to enter into the merits of the case which was sought to be set up by way of amendment at the time of considering the application for amendment. It is well settled that whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial.
31. To the mind of this Court, the learned trial judge was right in not entering into the merits of the case which was sought to be set up by way of amendment.
32. This Court accordingly holds that the learned trial judge was right in allowing the application for amendment of plaint after the trial has commenced.
33. Now this Court shall deal with the other decisions cited at the Bar.
34. In **B.K. Narayana Pillai (supra)**, the Hon'ble Supreme Court while dealing with an application for amendment of the written statement during the trial of the suit observed that the plea sought to be raised by way of amendment that in case he is not held a lessee, he was entitled to the benefit of Section 60(b) of the Indian Easement Act, 1882 is neither inconsistent nor repugnant to the pleas raised in the defence and accordingly permitted the defendant to amend the Written Statement. The said decision cannot be said to support the case of the petitioner.
35. There is no quarrel to the proposition of law laid down in **Pandit Malhari Mahali (Supra)** that the proviso to Order VI Rule 17 puts an embargo on the power of the Court to exercise its jurisdiction and the Court before

exercising the jurisdiction in a case where the proviso is attracted has to record its finding as contemplated under Order VI Rule 17 proviso before allowing the amendment. The said decision cannot come to the aid of the petitioner as this Court has already held that the amendment was rightly allowed after commencement of trial.

36. **Basavraj (supra)** is distinguishable on facts as on the facts of the said reported decision it was held that the proposed amendment would change the nature of the suit and the relief sought for was time barred.
37. In **Sampath Kumar vs. Ayyakannee and Another reported at (2002) 7 SCC 559**, the Hon'ble Supreme Court held that the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court can direct that the amendment to the extent permitted shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. In the said reported case, the amendment was filed 11 years after the date of institution of the suit and if the amendment is allowed to relate back to the date of the suit, the defendant would be deprived of the advantage accrued to him by lapse of time.
38. In the case on hand, the amendment application was filed within two years from the date of the suit. The decision in **Sampath Kumar (supra)** being distinguishable on facts cannot be applied to the case on hand.
39. In **Sukumar Kanp (supra)**, the co-ordinate bench after reiterating the parameters laid down in **Revajeetu Builders (supra)** for deciding an application for amendment remanded the case before the learned trial judge for adjudication of the amendment application afresh.
40. The order impugned does not contain reasons as to why the proposed amendments are necessary for the purpose of determining the real questions in controversy between the parties. The learned advocate for the respective parties made elaborate submissions on such issue and this Court has already held that the proposed amendment are necessary for the

purpose of determining the real questions in controversy between the parties. The ultimate conclusion arrived at by the learned trial Judge does not call for any interference. For such reason, this Court is not inclined to remit the case to the learned trial judge.

41. For all the reasons as aforesaid, this Court is not inclined to interfere with the impugned order. Accordingly, **C.O. 3100 of 2024** stands dismissed. Petitioner will be at liberty to file Additional Written Statement within a period of 3 weeks from the receipt of a server copy of this order. There shall be, however, no order as to costs.
42. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.- Rumela)