

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.O. 3776 of 2024

Sri Deba Pratim Majumder & anr.

Vs.

Arun Dutta & ors.

For the Petitioners : Mr. Dhiraj Trivedi
Mr. Bikash Kumar Singh

For the Opposite Party Nos. 4 to 8 : Mr. Amal Krishna Saha, Sr. Adv.
Ms. Nandita Baksi
Mr. Souvik Sarkar
Md. Shakeel Khan
Mr. Jane Alam

Heard on : 28.11.2025

Judgment on : 30.01.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioners herein have assailed the order dated 20th February, 2024 passed in T.S. 65 of 2015, by which the court below allowed plaintiffs prayer for amendment of the plaint.

2. Being aggrieved by the said order passed by learned trial court learned counsel for the petitioner Mr. Trivedi submits that the opposite parties herein filed the instant T.S. 65 of 2015 praying for declaration that the

plaintiffs and defendant no. 1 to 5 are joint owners in respect of schedule mentioned suit property and for preliminary decree for partition and also for final decree along with other reliefs. Petitioners entered appearance in the said suit and filed their written statements and thereafter issues have been framed and the suit was posted for peremptory hearing on 25.07.2017. On that very date, when the suit was fixed for adducing evidence by the plaintiff/opposite parties, they came up with the instant application for amendment of the plaint.

3. Defendant No. 6 & 7 who are petitioners herein contended in their written objection that by way of proposed amendment the opposite parties herein /plaintiffs want to bring on record certain facts which were well within their knowledge at the time of the filing of the suit. Their further contention is one Uddharani Dashi became owner of the property after the death of original owner Benimadhab Das by way of inheritance and thereafter, she by way of deed of release and relinquishment dated April 4th, 1921 had released and relinquished the suit property in favour of her four sons who thereafter by a registered deed of conveyance dated 16th August, 1922, had sold the property to Kamini Moni Dashi and the petitioners are the grand sons of Kamini Mony Dasi, and defendant no. 1 to 5 are their tenants and as such the question of ownership of Uddharani Dashi is extraneous and not at all important for the adjudication of the case. Moreover the application has been made after an inordinate delay and at the stage of hearing of the suit, as the issues have been framed long back.

4. He further contended that proposed amendment is not at all required for proper adjudication of the suit, in view of the fact that Uddharani had

relinquished all her rights in respect of the suit premises way back in the year 1921 in favour of her sons. The amendment prayed for by the plaintiff/Opposite parties, which primarily relates to the contention that Uddharani had no right to relinquish the suit property, cannot be agitated 100 years after said transaction and that too by making a prayer for amendment of the plaint. The proposed amendment is neither proper nor necessary for adjudication of the suit and if it is allowed, it will change the nature and character of the suit and would lead to retraction of certain statements made by the plaintiffs in the plaint. He further argued that since the issues have already been framed by the trial court for trial, the proviso to Order VI Rule 17 of the Code of Civil Procedure attracts, since hearing of the suit already commenced and in the absence of any proper explanation for the delay, such amendment cannot be allowed.

5. Mr. Trivedi further argued that the petitioners have already obtained a decree on January, 31st, 1997 against the plaintiff/opposite party in respect of the suit property and the said decree has been affirmed by this High Court vide judgment dated 24th April, 2008 and thereafter the instant suit was filed by the plaintiff with an ill motive to thwart the decree passed in aforesaid Ejectment Suit no. 726 of 1978. The plaintiff/opposite no. 1 to 3 and 4 to 8 herein are illegally residing in the suit building without paying any rent.

6. Moreover, the proposed amendment seeks to set up a case entirely different from the one originally pleaded. The plaintiffs original suit is founded upon the averment that Uddharani is the owner of the suit property in respect of which cause of action for filing the suit arose but now by way of

amendment the plaintiff/opposite parties seek to introduce a new cause of action stating Udharani had no right title interest over the suit property, which fundamentally changes the basis of the lis.

7. It is trite law that an amendment that substitutes or introduces a new and mutually destructive cause of action is impermissible. In this context he relied upon the judgment of the Apex Court in ***Modi Spinning and Weaving Mills Co Ltd. and Ladha Ram and Co.*** reported in (1976) 4 SCC 320 where it was held that amendments that altered the fundamental character of the suit or the nature of the case originally pleaded, must not be permitted. Therefore, plaintiff cannot be allowed to introduce a new case which is contrary to his earlier pleading. Relying upon another judgment reported in ***Vineet Kumar Vs. Mangal Sain Wadhera***, reported in (1984) 3 SCC 352, he contended that though it is general rule that amendments are to be liberally allowed but they cannot introduce a new cause of action or fundamentally alter the nature of the original pleading. In this context he also relied upon the judgment of ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons***, reported in (2009) 10 SCC 84.

8. He further argued that plaintiff has sought to amend the plaint after framing of issue and after commencement of trial and therefore under the proviso to Order VI rule 17 of CPC they require to show due diligence, but the OP have failed to meet this requirement. The facts sought to be introduced were available to the plaintiff at the time of filing of the suit, demonstrating lack of diligence. Therefore, the proposed amendment which have been filed to fill up lacuna or to improve his case, cannot be allowed

and as such the instant application is required to be allowed by setting aside the order impugned.

9. The learned counsel for the opposite party opposed the prayer made on behalf of the petitioners and contended that Uddharani Dasi got 3 cottahs of land with building from Beni Madhav Das, wherefrom she sold 1 cottah of land to Umesh Majumder in July, 1911 relating to a non suit property. She mortgage rest 2 cottah of land with building to Kamini Mohini Dashi on 16.08.1911. Plaintiffs in their plaint in para 1 have admitted that Uddharani was the absolute owner of the property by way of inheritance. By the proposed amendment the plaintiffs sought to incorporate the fact that Uddharani had limited interest in the property under the prevailing law of the land and therefore she had no right to sale or mortgage the property in the year 1911.

10. In this context Mr. Saha on behalf of plaintiffs/OP argued that in the instant case there was no admission as alleged by the petitioners under the provision of order XII of the Code. In Para 4 to 7 of the plaint, the plaintiff categorically stated that Uddharani repaid the loan and the mortgagor acknowledged the same. The property became free from any charge/mortgage. The plaintiffs jointly inherited the same and possessed the same free from all encumbrances and the defendant no. 6 and 7 have not specifically denied the same and as per provisions of CPC, it amounts to admission on the part of the defendant no. 6 and 7 about the said statement. In fact the proposed amendment is only for incorporation of alternative additional ground of law to prove the title of the plaintiff as claimed in the suit. The court below has not committed any gross mistake

which calls for interference by this court and as such the instant application is liable to be dismissed.

Decision

11. On perusal of the original plaint as well as the written statement filed by the defendant no. 1 to 5, adopting the averments made in the plaint, discloses that plaintiffs initial case was that Udharani Dasi was the absolute owner of 3 cotthas of land and she sold a portion of the property on 4th July, 1911 and in respect of remaining 2 cotthas of land, she created an equitable mortgage in favour of one Smt. Kamini Moni Dasi, the predecessor of defendant no. 5 and 6 who are petitioners herein and during her lifetime she repaid all her loan to the mortgagee Kamini Moni Dasi, in connection with erstwhile premises no.1/1A Ramdhan Mitra Lane, and thereafter Udharani died intestate on 03.06.1933 leaving behind 5 sons, who inherited the said property and thereafter the property devolved upon their legal heirs by succession who are plaintiff and defendant no. 1 to 5 in the said suit and predecessor of defendant no. 6 and 7 Kamini Moni Dasi was allowed by said Udharani to use and enjoy part of the ground floor northern side of the said property as a monthly tenant in respect of two rooms under Udharani and rest portion was possessed by Udharani where she resided with her family members.

12. Now by way of amendment the plaintiff wanted to incorporate in the plaint that Udharani being the female legal heirs of the deceased original owner Benimadhav Das had acquired limited interest in the property and therefore Udharani did not have any right to execute either registered or non-registered deed before her death during the period 1911 to 1933.

13. The main objection against the amendment application raised herein is that plaintiff in his plaint admitted that Udharani became the absolute owner of the property with the death of her father and accordingly by way of amendment plaintiffs cannot withdraw such admission by incorporating statement in the plaint that Udharani being a female member had acquired only limited interest in the property and as such before her death she cannot have any right to transfer either by the sale or by way of mortgage during the period 1911 to 1933.

14. It is fundamental that the amendment which would render suit infructuous and/or introduce a totally different new and inconsistent case and or challenges fundamental character of the suit, should not be allowed.

15. In ***Revajeetu Builders and Developers Vs. Narayanaswamy and sons*** (supra) the Apex Court on analysing both English and Indian cases have laid down some basic principles which may be kept in mind while dealing with applications filed under order VI rule 17, which are though illustrative and not exhaustive may be reproduced below:-

- 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.*

16. in ***Rajesh Kr. Agarwal & other Vs. K.K. Modi & others***, reported in **(2006) 4 SCC 385**, the Apex Court insisted that the real controversy tests is the basic or cardinal test and it is the primary duty of the court to decide

whether such an amendment is necessary to decide the real dispute between the parties and while considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in terms of the amendment

17. Therefore, from the aforesaid settled proposition of law relating to amendment of plaint, I am now required to consider first of all whether the proposed amendment, if allowed would constitutionally or fundamentally change the nature and character of the suit and secondly whether such amendment is necessary to decide the real dispute between the parties.

18. As I have stated above, even in the original plaint at para 14, the plaintiff had indicated that plaintiffs and defendant no. 1 to 5 are the undivided joint owners which they got by way of inheritance from their predecessor Udharani Dasi who got the same from her paternal side and during her lifetime she never transferred her said property by way of “absolute sale or otherwise” in any means whatsoever. Therefore the real controversy tests in the present context is whether Udharani’s right title interest in the property in question was limited or not and whether she had any right to execute deed either registered or unregistered in between the period 1911 to 1933.

19. In view of above, it is clear that if the proposed amendment is allowed it would neither change the cause of action of the suit, nor the relief as sought for would be materially affected. It is settled law that undoubtedly categorical admission cannot be resiled from but in a given case it may be explained or clarified. Offering explanation in regard to admission or explaining away the same cannot be said to be mutually destructive. In the

instant case what the plaintiff has averred in para 14 that Udharani never transferred such property by way of absolute sale has been sought to be explained and/or clarified by way of proposed amendment.

20. Now in answer to the ground taken by the defendant that the prayer for amendment is belated one it appears that even if it is belated then also the question that needs to be decided is whether by allowing the amendment the real controversy between the parties i.e. whether Udharani was owner of the property till her death or predecessor of defendant no. 6 and 7 Kaminimoyee Dasi acquired Title in the property during the life time of Udharani needs to be resolved in the instant suit. A belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it is required to be allowed on payment of costs, because in such cases the court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed can be compensated by costs and/or by allowing him to file additional written statement.

21. In the instant case by the proposed amendment the plaintiff has not sought for any additional relief in the plaint. Even after the proposed amendment the suit will remain confined to the relief as prayed in the original plaint which is for a declaration that the plaintiffs and the defendant no. 1 to 5 are the joint owners in respect of the property mentioned in the scheduled to the plaint and thereby to pass a decree for partition and for permanent injunction along with other reliefs. Therefore the subsequent fact which basically involves the question of law is required to be included to adjudicate the matter completely.

22. This is also because there cannot be any estoppel against the statute. In the instant case one of the issue that will have to be considered by the trial court is whether under the prevailing statute Uddharani had any right to execute registered or unregistered deed and in the event of execution of such deed, what would be its fate. In fact the legal point that has been sought to be incorporated by way of amending the plaint has certain impact over the main relief for declaration of title as sought for in the suit. For the same reason, though in paragraph no.1 of the plaint, plaintiff has stated that predecessor-in-title of the plaintiffs and defendants no. 1 to 5, Uddharani Dasi was the absolute owner of the property, but from the facts and circumstances of the case, it is clear that such admission even if made is not conclusive and subject to court's scrutiny. Amendment of plaint cannot be refused simply because it seeks to withdraw or seeks to explain the admission already made. It in fact depends upon facts and particulars of each case. In the instant case aforesaid alleged admission that Uddharani had absolute title in the suit property does not depend upon admission because admission does not create title and therefore not conclusive and may or may not be held to be erroneous. Therefore, as the same is a triable issue, the proposed amendment cannot be refused.

23. It is well settled that the dominant purpose of allowing the amendment is to minimize litigation. If the granting of amendment really subserve the ultimate cause of justice and avoids further litigation, the same should be allowed. In my opinion the proposed amendment shall not introduce a different case when the necessary factual basis that predecessor of defendant no. 5 and 6 never acquired title in the property had already

been laid down in the plaint in regard to the plaintiffs title. Furthermore by way of proposed amendment plaintiff does not want for deletion of any statement relating to any alleged admission nor he has prayed for substitution of one set of fact in the place of facts already stated in the pleading or in the evidence and as such I do not find any reasons as to why the plaintiffs prayer for amendment shall not be allowed, specially when proposed amendment, if allowed, would not change 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

24. Therefore in view of above discussion it is clear that plaintiff had not made any fresh allegation or sought to be added fresh relief by way of amendment but only tried to clarify the existing pleading, which does not in substance add to or alter the existing pleading. Therefore I find that the order of the court below allowing the proposed amendment does not suffer from any impropriety or perversity which can call for interference by this court invoking this court's jurisdiction under Article 227 of the Constitution of India.

25. C.O. 3776 of 2024 thus stands dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)