

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.O. 3926 of 2024
Nur Islam Gazi & anr.
Vs.
Sri Kallol Das & ors.

For the Petitioner : Mr. Animesh Paul

For the Respondent No.1 : Mr. Samim Ahmed
Mr. Ambiya Khatun
Ms. Reshma Khatun
Mr. H. Shakil

Heard on : 21.05.2026

Judgment on : 17.06.2026

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioners herein are aggrieved with an order dated 5th September 2024 passed by learned Additional District Judge, Fast Track 3rd Court Basirhat in T.A No. 14 of 2011. By the impugned order learned Court below has rejected the petitioners prayer for amendment of written statement made at the appellate stage. The plaintiff/OP no.1 herein filed a suit for declaration and permanent injunction praying that the defendant no. 1 and

2/petitioners herein have no legal right to enter into the schedule-mentioned suit property or any portion thereof and/or cause obstruction and/or make any construction over the suit properties containing total area of 09 satak being T.S 6 of 2004. The A schedule suit property is comprising of plot no. 712/3328 under khatian no. 551 measuring 03 satak and schedule B suit property involves khatian no. 20/206/205 and 932 in respect of same plot no. 712/3328 measuring 06 satak.

2. The defendant no.1 and 2/petitioners herein contested the said suit by filing written statement as well as additional written statement thereby denying the statements made in the plaint. Their specific contention in the additional written statement is that the recordings of the Suit properties in the Record of Rights are erroneous.

3. Upon contested hearing learned trial court by the judgment and decree dated 20.12.2010 dismissed the suit on contest being T.S 6 of 2004, observing that plaintiffs prayer for declaration that the defendants have no right to enter upon or make any construction over the suit land and also prayer for permanent injunction against them is not tenable in the eye of law, mainly because they are the co sharers in respect of suit plot and the property under challenge has not been partitioned by metes and bounds till date and therefore, the proper remedy for the plaintiff would be to institute a suit for partition and injunction in respect of the suit plot.

4. Being aggrieved by the aforesaid order of dismissal the plaintiff opposite party no.1 herein preferred aforesaid appeal being T.A no. 14 of 2011 before the court below and during the hearing of the said appeal the petitioners/respondents allegedly detected that certain material subsequent

development relating to correction of Record of Rights concerning the suit plot needs to be brought in the written statement by way of amendment.

5. Precisely in the amendment petition, petitioner sought to incorporate the facts of passing order in O.A no. 668 of 2006 by the West Bengal Land Reforms and Tenancy Tribunal, (in short WBLRTT) concerning petitioner's prayer for correction of the RS Record of Right, which was allowed on 10.03.2006 and pursuant thereto the order passed in Miscellaneous Proceeding no. 6 of 2006 by the Block land and Land reforms officer (in short BL & LRO) Basirhat, by which the Record of Right was corrected, deleting the suit khatian. However upon contested hearing, the court below rejected the said application for amendment.

6. Being aggrieved by the impugned order learned counsel for the petitioner/respondent submits that learned court below made a gross error of law in entering into the merits of the proposed amendment at the stage of consideration of the application for amendment, which is against the settled proposition of law on the subject. He did not consider that the decision passed by the authority in connection with the correction of Record of Rights are very much required for proper and effective adjudication of the case, in as much as omission thereof would lead to a decision in contrary. He also failed to consider that the proposed amendment, even if prayed at belated stage, was due to unintentional lapses or negligence and there has been no *malafides* involved and as such the same ought to have been allowed by the court below. Therefore he prayed for setting aside the order impugned.

7. Learned counsel appearing on behalf of the opposite party opposed the prayer contending that the petitioner herein had failed to approach this

court or even before the court below with clean hands by deliberately not disclosing that the correction of Records of Right which they have sought to introduce is at present subject matter of adjudication in O.A no. 1299 of 2013. In any event, scope of interference by the Hon'ble High Court exercising jurisdiction under Article 227 of the Constitution of India is very limited and it should not act as an Appellate Court or Tribunal or to reassess or review the evidence upon which the court below has passed the order. Therefore existence of a particular plot or khatian and its consequence in the suit, cannot be the subject matter of consideration, while exercising jurisdiction under Article 227 of the Constitution of India.

8. The petitioner herein is not at all diligent in as much as the facts relating to correction of Record of Rights had taken place in the year 2007, while the suit was finally decided in the year 2010. The petitioner herein did not even prefer any counter appeal or cross appeal against the dismissal of the suit. Application for amendment of written statement in the present Appeal was filed in the year 2024 i.e. after expiry of 17 years from the date of occurrence of the fact, sought to be introduced. Therefore, the first appellate court has rightly exercised its jurisdiction by rejecting the application for amendment on the ground of delay as well as lack of diligence on the part of the petitioner herein and as such it does not call for interference by this Court.

Decision

9. From the prayer portion for amendment it is clear that petitioner/respondent wants to incorporate in the written statement by way of amendment the fact that the petitioner initiated O.A. no 6686 of 2006

before WBLRTT for correction of L.R. Khatian in Connection with 33 satak of land over suit plot no. 712/3328 and in view of an order passed by the Tribunal dated 10.03.2006 petitioner brought Misc. Case no. 6/2006 before BL & LRO, Basirhat1 where different orders were passed from 26.06.2006 to 22.01.2007 and thereby the entry in connection with plot no. 712/3328 was held to be erroneous and accordingly LR Khatian has been prepared in the name of petitioner and his brother, being LR Khatian No. 3600,2709,2710,2711. Petitioners further sought to incorporate by way of amendment that as per enquiry report mentioned in the order sheet, heirs of Sudhasnghsu Sekhar Choudhury have no possession in LR Khatian No. 740,.790,1142 and said plot are been possessed by petitioners and they are possessing plot no. 712/3333, 712/3335/718/3338 and 718/3339 in place of Suit plot no. 712/3328. Petitioners LR khaitan no. 3600 has been wrongly recorded in the name of one Manik Goldar as permissive occupier, though no such person ever Possessed the said property.

10. During the course of hearing, opposite party herein has not denied about the proceeding being OA 668/2006 and also order passed in connection with Misc. Case 6/2006 but their contention is that the petitioners were not diligent to incorporate the same in pleading, inspite of the fact that such orders were passed during the pendency of the suit and secondly the correction of Record of Rights, which they have sought to introduce is subject matter of adjudication in OA no. 1299 of 2013.

11. It further appears from the impugned order that the court below rejected the petitioners prayer for amendment on the following grounds:

- (i)** petitioners have not preferred any cross appeal or cross objection raising the particular defence to meet the ground of appeal but they simply supported the impugned judgment and decree and therefore the question of entertaining any fresh question of fact and law does not arise
- (ii)** the proceeding before the WBLRTT has been disposed of on 10.03.2006 and the proceedings before the BLLRO Basirhat was disposed of on 22.01.2007, whereas the impugned judgment and decree by the trial court was recorded on 20.12.2010, so the respondent could have brought the proposed amendment before the Trial Court much before pronouncing the impugned judgment, which they did not do and their excuse that they are illiterate and poor are not sustainable in the eye of law
- (iii)** the proposed amendment has been sought for as an additional ground to show that the entry in the RS Record of Right is wrong, erroneous baseless as was held in the said two proceedings but finding of the said two proceedings being passed in quasi-judicial proceedings are not binding upon the civil Court, who has been asked to investigate the title of the parties to the suit.
- (iv)** Record of rights does not create or extinguish title and therefore subsequent correction in the record of right as

claimed by the respondent would have no effect in the shares recorded in their title deeds.

(v) the nature of suit plot is HUT (market place) and so they have only rent receiving interest from the hawkers and therefore they would have no specific possession in respect of any particular portion of the suit plot and therefore even if any subsequent correction has been made in the record of rights, they are not essential facts to determine the real controversy between the parties.

(vi) if the proposed amendment is allowed it would have effect of reopening of trial because the appellant is to give further evidence to meet the proposed amended facts.

12. It is undoubtedly true that the trial court passed judgment dismissing the suit on 20.12.2010 and subject matter of the amendment sought to be incorporated in the written statement was passed in 2007. Therefore appellant/plaintiff/opposite party herein strenuously argued that such prayer is barred under the proviso to Order VI Rule 17 of Code of civil procedure (in short CPC) which states

‘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 have raised the matter before the commencement of trial.’

13. Now Order VI Rule 17 envisages amendment of pleadings which states that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the

purpose of determining the real questions in controversy between the parties. Therefore granting of amendment on such term is also a condition for the purpose of determining the real question in controversy between the parties.

14. In *Mahila Ram Kali Devi and Ors. Vs. Nandaram* reported in (2015) 13 SCC 132 Supreme Court has observed as follows:-

20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

15. It is also well settled in view of judgment pronounced in ***North Eastern Railway Administration Gorakhpur, Vs. Bhagwan Das*** reported in (2008) 8 SCC 511, that amendments ought to be allowed, which satisfy two conditions. Relevant paragraph may be reproduced below:-

16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.

16. Apex Court further in case of ***Mrs. Revajeetu Builders and developers Vs. Mrs. Narayanswamy and Sons and Ors.***, (2009) 10 SCC 84 has laid down certain factors which would be taken into consideration while dealing with applications for amendment

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.

17. Therefore, the first question that needs to be addressed is whether proposed amendment is imperative for proper and effective adjudication of the case. Learned Court below while dealt with the issue observed that entry in Record of Rights does not create title, so proposed amendment is not necessary to declare the share of the parties and since the suit property is a market place (HUT), there cannot be any specific possession by either party in any specific portion of the property.

18. On a bare perusal of prayers made in the plaint, it appears that opposite party herein/appellants' suit is for declaration that petitioners have no right to enter into the property or any portion thereof and to cause any obstruction and/or making any construction over the property mentioned in Schedule A and B to the plaint. Therefore it is not correct to say that since property in question is market place (HUT) so there cannot be specific possession in respect of specific portion of the property. Moreover, in prayer (b) of the plaint plaintiff specifically prayed for permanent injunction restraining the petitioners from entering into the suit property described, in the schedules to the plaint. Therefore the trial courts observation that proposed amendment concerning correction in records of rights would have

no bearing for the adjudication of the suit is uncalled for. Entry in record of rights has an impact over the issue of possession and as a corollary issue of determination for granting permanent injunction, which relates to possession of the property by the parties.

19. The next factor to be taken into consideration is whether the application for amendment is *bonafide* or *malafide*. It is no body's case that the prayer for amendment is *malafide*, since it basically pertains to order passed by appropriate authorities, which relates to the revision of Record of Rights.

20. To deal with the two other factors namely whether amendment would cause such prejudice to other side which cannot be compensated by money and /or refusing amendment would lead to multiple litigation, it appears that the proposed amendment seeks incorporation of subsequent development that took place after filing the suit, concerning correction of the Record of Rights in respect of the suit property by the competent authority under section 50 of the West Bengal Land Reform Act, 1955, (in short Act of 1955) pursuant to orders passed by the Tribunal as well as consequent deletion of khatian no. 551,20206,205 and 932 in connection with plot no. 712/3328. These developments may have an impact upon the identity and existence of the very suit properties forming subject matter of the lis and therefore, are material and necessary for effective adjudication of the disputes between the parties. It is highly probable that if such subsequent event are not brought on record, the court may proceed on an outdated factual foundation and may ultimately pass a decree relating to khatian entries, which no longer exists in the Records of Rights and as a result if

any decree is passed that may have become incapable for proper execution and may lead to multiplicity of proceedings.

21. The other question raised is proposed amendment if allowed will constitutionally and fundamentally change the nature of the suit. In the instant case the petitioners had already pleaded in the additional written statement that the entries in the record of rights are erroneous. The proposed amendment if allowed will merely elaborate and substantiate the said existing defence by bringing on record subsequent statutory corrections made by competent authorities. Therefore, proposed amendment, if allowed, will neither introduce any new case nor would amount to withdrawal of any admission nor would change the nature and character of the suit.

22. The court below while decided the issue wrongly held that since petitioner has not preferred any cross appeal or cross objection raising the particular defence to meet the ground of appeal, so the question of entertaining any fresh question of fact and law does not arise. In this context it is needless to say that the right to seek amendment of pleadings is not dependent upon filing of cross objections. Furthermore, the court below i.e. first appellate court being the final court on facts possesses ample jurisdiction to permit amendments necessary for effective adjudication, even if such amendment may require adducing further evidence. Under no circumstance, it can be said that the proposed amendment if allowed, would introduce any new case but it merely seeks to incorporate subsequent development that took place after filing the suit, affecting the very existence of suit property itself.

23. Court below further erred in law in holding that the proposed amendment has been sought as an additional ground to show that the entry in the Record of Rights is erroneous as held in the said proceedings but findings of the said proceedings being of quasi-judicial proceedings are not binding upon the civil court who has been asked to investigate the title of the parties to the suit

24. In this context learned court below failed to appreciate that the proposed amendment is not an additional ground in as much as the petitioners had already pleaded in the written statement that the entries in the Record of Rights are erroneous. As I have stated above that the proposed amendment merely seeks to elaborate and substantiate the said existing defence by brining on record subsequent statutory developments relating to correction of the Record of rights and/or deletion of the suit khatian by the competent statutory authorities. The court below further failed to appreciate that the proposed amendment relates to correction made in the Record of Rights by the competent authority under section 50 of the Act of 1955 pursuant to orders passed by WBLRTT. The findings and the order passed by the WBLRTT and the BLLRO are very much binding upon the civil court in matters relating to preparation, correction and adjudication of records of rights. In the instant case it may be noted that by the proposed amendment, the defendant has not sought for any additional defence in the written statement. The defence remains as it was before even after proposed amendment. The subsequent correction in the Record of Rights, during pendency of the suit required to be included to adjudicate the matter completely, as it may have certain impact over the main reliefs sought for.

The proposed amendment, if allowed would not prejudice the opposite party/plaintiff if he will get the chance of filing rejoinder.

25. It also needs to be mentioned that it is well settled that at the stage of considering prayer for amendment of pleadings, the court is not required to adjudicate correctness, truthfulness or ultimate effect of the proposed amendment in the pleading. The only consideration under Order VI Rule 17 is whether the proposed amendment is necessary for determining the real question between the parties. The subsequent statutory correction made by competent authorities may have a direct effect in respect of the identity of suit property and existence of suit khatians and therefore necessary for proper and effective adjudication of the disputes involved in the lis.

26. One of the main reason for rejection of prayer for amendment by the court below, as reflected in the impugned order is that if the proposed amendment is allowed it would have the effect of re-opening trial because appellant will have to give further evidence and for which application for amendment cannot be allowed. Such observation is based on perverse finding in view of the fact that even if additional evidence becomes necessary, amendment ought to be allowed if it facilitate complete adjudication and to avoid multiplicity of proceedings. In the instant case the proposed documents if required to be proved in view of amendment, are all public documents arising out of statutory proceeding conducted in presence of the plaintiff/opposite party and therefore no irreparable prejudice would be caused to the opposite party herein if the proposed amendment is allowed. Therefore, if situation demands appellate court can also take additional evidence under Order XLI Rule 27 in respect of public documents,

since it may enable to pronounce judgment or for any other substantial cause.

27. However, lastly one question still remains which needs to be answered i.e. when proposed prayer for amendment has been made at a belated stage at the time of hearing appeal and when the fact of passing the order relating to correction of record of rights took place during the pendency of the suit and much before delivery of judgement, whether amendment at appellate can be allowed in view of restriction laid down in the proviso to order VI rule 17 of CPC.

28. It is well settled that delay by itself cannot be a ground to refuse amendment, if proposed amendment is necessary for determining the real controversy between the parties, specially in order to adjudicate the issue of permanent injunction. It is equally well settled that procedural law is intended to advance the cause of justice and not to defeat substantive right on technical grounds. Furthermore, documents referred herein are all public document meaning thereby that public in general have access to orders passed in such proceeding and correction in Record of Rights allegedly made. Opposite party herein has not taken the plea during the hearing that they were not aware about such recording, rather their specific case is that the correction of record of right which they have sought to introduce is subject matter of adjudication in OA 1299/2013. Therefore, plaintiff/appellant/opposite party herein being the master of the suit, who advanced his case by making prayer for injunction connection with the suit property, and which was subsequently got revised in an appropriate proceeding, was definitely under legal obligation to bring before the court

the latest entry in record of rights, as well as exceptions taken therein by them, as in the event of declaration of title and permanent injunction, such correction would have a direct impact upon the identity of the suit property. Therefore, I am of the view that without making any effort to make necessary assertion regarding correction in the Record of Rights concerning suit property in the plaint, inspite of knowledge, the plaintiff/opposite party cannot now take advantage of his own wrong by raising a technical issue against prayer for amendment by saying that it has been filed 17 years after passing the concerned order. Therefore, even if proposed amendment has been filed at a much belated stage, which appears to have direct nexus with the issue in controversy, it is required to be allowed to adjudicate the matter completely once for all and to subserve the ends of justice.

29. Before conclude I also want to remind that amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is well settled that though it is true that some general principles are certainly common to both but the rules that the plaintiff cannot be allowed to amend his pleadings, so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. This is also because a new ground of defence or substituting or altering a defence does not raise the same problem as adding altering or substituting a new cause of action and therefore the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case. In this context reliance has been placed upon the judgement

passed in ***Baldev Singh and Ors. Vs. Manohar Singh and Anr.*** reported in **(2006) 6 SCC 498**, and ***Sushil Kumar Jain Vs. Manoj Kumar and Anr.*** reported in **AIR 2009 SC 2544**.

30. Considering all the above mentioned facts and circumstances of the case CO 3926 of 2024 is allowed.

31. Petitioners prayer for amendment of written statement is allowed subject to payment of cost of rupees of 1,000/- to the Calcutta High Court Legal Services Authority, within a period of four weeks from the date of communications of this order. In the event of amendment of written statement, the court below will give an opportunity to file rejoinder by the opposite party herein/appellant and thereafter he will proceed to dispose of the appeal at the earliest, without being influenced by any observation made herein.

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.)