

Form No. J(2)

In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Civil Revisional Jurisdiction

Present :

THE HON'BLE JUSTICE ARINDAM MUKHERJEE

Case No.

CO 30 of 2026

In the matter of :

SRI NIRMAL KUMAR AGARWAL @ NIRMAL AGARWAL & ANR.

...Petitioners

VS.

SRI RAM AVATAR AGARWAL & ORS.

...Opposite Parties

For the Petitioners : Mr. Saptansu Basu, Sr. Advocate
Mr. Milindo Paul
Mr. Nabankur Paul
Ms. Sutapa Sen Paul
Ms. Bedashruti Bose
Mr. Subham Das
Mr. Bodhisatya Ghosh
Ms. Shiksha Goyal
Mr. Aditya Seal

...Advocates

For the Opposite Party no.1 : Mr. Shashi Kanodia
Mr. Binod Chakraborty
Mr. Rishav Das

...Advocates

For the Opposite Party no.3 : Mrs. Aayushi Agarwal
Mr. Nigam Mittal

...Advocates

Heard on : 18th May, 2026 & 20th May, 2026

Judgment on : 22nd May, 2026

ARINDAM MUKHERJEE, J. :-

1. The present revisional application arises out of an order dated 28th November, 2025 passed by the learned Civil Judge (Junior Division), 2nd Court, Jalpaiguri in Title Suit no.141 of 2012 by which an application under the provisions of Order VI Rule 17 of the Code of Civil Procedure, 1908 (in short, "CPC") to amend the plaint was allowed.
2. The petitioners have contended that the amendment application was made on 17th May, 2023 when the suit was filed in 2012 and the knowledge as to the facts on the basis whereof amendment has been sought for is admittedly in the year 2016 when the written statement by the original defendant no.1 in the suit was filed. According to the petitioners, no fresh suit for the relief claimed could lie on the date when the application for amendment was made.
3. That apart and in any event, the amendment seeks to change the nature and character of the suit. The suit was initially for recovery of possession on the allegation that the defendants were trespassers and there was no cloud as to the title of the plaintiff / opposite party. The declaratory relief was, therefore, not claimed in the suit as originally filed. When the written statement was filed, the plaintiff / opposite party sought to

amend the plaint to incorporate the declaratory relief as also for setting aside of the title documents.

4. The petitioners also say that the cause of action in the suit as originally framed is different from that which is sought to be incorporated by way of amendment which has been allowed. The nature and character of the suit on the amendment being allowed has, therefore, changed.
5. Furthermore, the amendment has taken away the accrued right of the petitioners as against the plaintiff / opposite party inasmuch as a time barred claim has been allowed to be incorporated.
6. The petitioners have cited the following judgments :-
 - i. **(1996) 7 SCC 486**
[Radhika Devi vs. Bajrangi Singh & Ors.];
 - ii. **(2010) 14 SCC 596**
[Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Registered) vs. Ramesh Chander & Ors.];
 - iii. **(2024) 3 SCC 705**
[Basavaraj vs. Indira & Ors.];
 - iv. **AIR 1967 SC 96**
[A. K. Gupta and Sons Ltd. Vs. Damodar Valley Corporation].

7. By relying upon paragraph 6 of **Radhika Devi (supra)**, it is contended by the petitioners that the Hon'ble Supreme Court has clearly held that in a fact situation where a party acquires right by bar of limitation and if the same is sought to be taken away by the amendment of the pleadings, the amendment in such circumstances would be refused.
8. The petitioners by relying upon paragraphs 32 and 33 of **Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Registered) (supra)** have supported the contention as to alteration of the nature and character of the suit. The ratio laid down in the said judgment says that an amendment which tends to alter the character of the suit as submitted by the petitioners, the amendment, therefore, ought to have been refused.
9. The petitioners then by relying upon paragraph 16 of **Basavaraj (supra)** submit that the Hon'ble Supreme Court has clearly laid down the application of Article 59 of the Limitation Act, 1963 in case of an application seeking amendment of pleadings. The petitioners say that the test is that a fresh suit to challenge the action may not be maintainable if the same is sought to be incorporated after expiry of the period of limitation.
10. At the end, the petitioners by relying upon paragraph 9 of **A. K. Gupta and Sons Ltd. (supra)** submit that no amendment will be

allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time. The cause of action, if any, sought to be introduced by amendment, according to the petitioners, has introduced a new set of ideas which has caused prejudice to the right created in favour of the petitioners on such cause of action, if any, being barred by lapse of time.

11. The opposite parties / plaintiff have countered the argument advanced by the petitioners on the following grounds:-
12. The plaintiff is the owner of the suit property. The plaintiff on finding that the defendants have illegally and unlawfully trespassed into his property has filed the suit for a decree for recovery of possession and permanent injunction after the possession was restored back. The plaintiff had only asked for recovery of possession as he was not aware about any adverse title being projected against that of the plaintiff. No declaratory relief so far as the right, title and interest in the suit property and cancellation of documents. The suit was, therefore, framed and valued as one under the provisions of Section 7(vi)(a) of the West Bengal Court Fees Act, 1970 (hereinafter referred to as the "1970 Act").

13. During the pendency of the suit, the plaintiff came to know from the written statement filed by defendant no.1 about the claim of ownership made by the defendant nos.2 and 3 in respect of the suit property. The plaintiff, as such, on further enquiry came to learn that the vendor of the plaintiff Nafiruddin Mohd. who sold and conveyed the suit property to the plaintiff by the sale deed bearing no.I-3983 for the year 1964 had conveyed the property to the plaintiff for valuable consideration. The defendants, on the other hand, allege that the plaintiff sold and transferred the suit land in favour of Animesh Mukherjee, son of late Sashi Sekhar Mukherjee by executing a registered deed of sale bearing no.I-3568 dated 01.06.1985. The defendants nos.2 and 3 derived title from Animesh Mukherjee which is disputed by the plaintiff as he says that the documents referred to be executed in favour of Animesh Mukherjee is a fraudulent document.
14. In this background, the plaintiff sought for amendment of the plaint and incorporated the following prayers :-

“(A1). A decree declaring that the Plaintiff is the absolute owner of the entire suit property as fully described in the Schedule hereunder of this plaint.

(A2). a decree declaring that the Plaintiff has every right, title and interest over the suit property as fully described in the Schedule hereunder of this plaint.

(A3). a decree declaring that the defendants have no right, title and interest in and over any part of the suit property as fully described in the Schedule hereunder of this plaint.

(A4). Pass a decree for a declaration that the Deed of Sales bearing nos.I-3568 for the year 1985, I-5027 for the year 1986, I-3911 for the year 1987, I-355 for the year 1996, I-357 for the year 1996 and I-1723 for the year 1723 for the 1997 as detailed above are invalid, nullity, non-est, void and illegal and not binding upon the Plaintiff."

15. The plaintiff (opposite parties) says that the suit on being amended is governed by the provisions of Article 65 of the Limitation Act, 1963 (in short, "1963 Act") and not by the provisions of Article 59 of the said Act as alleged by the defendant-petitioner. Referring to Article 65 of the 1963 Act, the plaintiff says that for a declaration of right in respect of an immovable property with a prayer for recovery of possession, the limitation period is 12 years when the possession of the defendants becomes adverse to the plaintiff. The suit on the amendment is not a simplicitor suit for setting aside or

cancellation of documents for which the limitation period is under Article 59 for three years from the date when the facts entitled the plaintiff to have the instrument cancelled or set aside first became known to him.

16. The opposite parties / plaintiff then say that limitation is a mixed question of law and fact and, as such, only on the basis of limitation the amendment allowed by the Trial Court cannot be set aside. The parties should be relegated to the trial instead of refusing the amendment at this stage.

17. The opposite parties have relied upon the following judgments in support of their contention :-

i. (2002) 7 SCC 559

[Sampath Kumar vs. Ayyakannu & Ors.];

ii. (2004) 6 SCC 415

[Pankaja & Ors. vs. Yellappa (D) by Lrs. & Ors.];

iii. 2024 (15) SCALE 992

[Mallavva & Ors. vs. Kalsammanavara Kalamma (since dead) by Legal Heirs & Ors.];

iv. (2010) 12 SCC 112

[Suhrid Singh vs. Randhir Singh & Ors.];

v. 2016 (1) ALT 300

[Nade Ali Mirza & Ors. vs. Khalida Mohammed Salim Dawawala & Ors.].

18. By relying upon the judgment in **Sampath Kumar (supra)**, the opposite parties / plaintiff referred to the parameters to be looked into while allowing an amendment of a pleading under the provisions of Order VI Rule 17 of the CPC. The opposite parties say that in view of the ratio laid down in **Sampath Kumar (supra)**, the amendments sought for by the opposite parties / plaintiff could not have been refused on the ground of limitation as the original structure of the suit is not altered by way of amendment incorporating new relies. The Trial Court, therefore, has rightly allowed the amendments.
19. By relying upon the judgments in **Pankaja & Ors. (supra)** and **Suhrid Singh (supra)**, the opposite parties support their argument that the amendments sought for in the plaint are governed by the provisions of Article 65 of the 1963 Act and not under Article 59 of the said Act as contended by the petitioners.
20. The opposite parties have relied upon the judgment of **Mallavva & Ors. (supra)** to demonstrate their contention that the amendments sought for are not barred by limitation.
21. The judgment of **Nade Ali Mirza & Ors. (supra)** has been cited by the opposite parties in support of the contention that the amended plaint has been properly valued and is also maintainable.

22. The opposite parties, therefore, pray for rejection of the revisional application.
23. After hearing the parties, considering the materials on record and the judgments cited at the Bar, I find that the Court has a discretionary right while exercising jurisdiction in respect of an application for amendment of pleading under Order VI Rule 17 of CPC. The discretion, however, is not an unlimited one but is bounded by the parameters required to be considered as held in various judgments including those cited at the Bar. It is correct that a vested right acquired to a party to challenge the amendment cannot be taken away on the ground that an application for amendment of pleading is to be considered leniently as the amendment does not *ipso facto* lead to a passing of a decree in favour of the plaintiff(s) or refusal of relief in favour of a defendant(s). In the case of **Sampath Kumar (supra)** cited by the opposite parties, the Hon'ble Supreme Court has vouched for such liberal approach while considering an amendment application. The said judgment also holds that seeking to introduce a cause of action which arose during the pendency of the suit, the nature and character of the suit does not always change. One has to look into the basic structure of the suit as rightly filed and whether the same remains unchanged after the amendment even on introduction of new

reliefs based on a new cause of action which arose during the pendency of the suit.

24. The Hon'ble Supreme Court in the case reported in **(2008) 14 SCC 632 [South Konkan Distilleries & Anr. Vs. Prabhakar Gajanan Naik & Ors.]** has held that unexplained delay in amending the written statement to enhance the counter claim is required to be refused. The same proposition applies to amendment of plaint. In the said judgment after review, the law right from the case of **A. K. Gupta (supra)** cited by the petitioners up to the judgment of **Pankaja & Ors. (supra)** cited by the opposite parties has summarized the ratio in paragraph 14 thereof which is set out hereunder:-

“...14. From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.”

25. The Supreme Court in the said judgment has also held that where there is no dispute as to the question of limitation, the amendment is required to be refused.
26. In the judgment reported in **(2008) 15 SCC 610 [Ashutosh Chaturvedi vs. Prano Devi alias Parani Devi & Ors.]**, the Hon'ble Supreme Court again has reiterated the principles for allowing an amendment application under Order VI Rule 17 of the CPC. It is held in the said judgment that if the amendment amounts to a fresh suit and is barred by limitation, it would not be allowed by the Court.
27. Now coming to the facts of the instant case, in paragraphs 5 and 6 of the plaint, the plaintiff has stated that he was the owner of the suit property and had been regularly visiting the same. Only on 10th April, 2011 he became aware that the defendants have trespassed into the property and is operating a motor service centre therefrom. The plaintiff after making enquiries filed the suit admittedly in the year 2012, i.e., after six months from the plaintiff having dispossessed from the suit property. This gives rise to a case under Section 6 of the Specific Relief Act, 1963 which mandates that a suit for recovery of possession on having been dispossessed from an immovable property is required to be filed within a period of six months from the date of

dispossession. In the instant case, if 10th April, 2011 is taken to be date of knowledge, the plaintiff was required to file a suit by October, 2011 which is admittedly not the case in the instant suit.

28. Without going into this aspect of the matter, the plaintiff came to know as will appear from the application for amendment about the property being owned by the defendant nos.2 and 3 from the written statement filed by the defendant no.1 filed in 2016. The plaintiff was required to seek declaration of his right and cancellation of the documents said to have been executed in favour of the defendant nos.2 and 3 within a period of three years from the date of knowledge, i.e., 2016. The amendment application has been made in the year 2022, i.e., admittedly after six years from the date of knowledge when the three years period expired in 2019. The delay in filing the amendment application remains unexplained. On the date of the amendment application, a fresh suit for cancellation of documents which is admittedly under Article 59 of the Limitation Act, 1963 was barred. The argument made by the plaintiff / opposite parties to come out of this rigor of limitation places the plaintiff's case into further legal questions. The suit as originally framed was under Section 7(vi)(a) of the 1970 Act where the plaintiff sought only for recovery of possession without declaration of title to

the property. With the knowledge of the defendant being the owner of the suit property, the plaintiff was required to seek declaration as to his title and cancellation of the documents as required under Article 59 of the Limitation Act, 1970. The contention of the plaintiff that the suit is under the provisions of Article 65 of the Limitation Act, 1963 for which the limitation period is 12 years from the date of knowledge is untenable as the same changes the nature and character of the suit. Even if we consider the ratio laid down in **Sampath Kumar (supra)** that only nature of the reliefs sought to be incorporated does not change the nature and character of the suit if the basic structure of the suit remains unchanged, the amendment should be allowed is also not applicable to the facts of the instant case. The entire sub-stratum of the suit is changed from a suit for recovery of possession without declaration of title to a suit for declaration of title, cancellation of documents and recovery of possession. The valuation of the suit also gets changed as the suit is in such a case has to be valued at the market value of the immovable property and not under Section 7(vi)(a) of the West Bengal Court Fees Act, 1970 since the plaintiff is seeking not only recovery of possession but declaration of title by evicting a trespasser. The plaintiff has also changed the valuation. This

gives rise to a conclusion that the nature and character of the suit is changed on the amendment being allowed.

29. The delay in filing the amendment application remains unexplained. No fresh suit can or could have been maintained on the date when the amendment application was made. That apart and in any event, a valuable right has accrued in favour of the defendants, it cannot be taken away by allowing a time-barred amendment which is admittedly based on new set of facts, ideas and cause of action.
30. In the aforesaid facts and circumstances, the revisional application is allowed.
31. The order dated 28th November, 2025 passed by the learned Civil Judge (Junior Division), 2nd Court, Jalpaiguri in Title Suit no.141 of 2012 is set aside.
32. The parties will free to take appropriate steps before the Trial Court.
33. Urgent Photostat certified copy of this judgment and order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)