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HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CM(M) No. 242/2026
CM No. 7739/2026
CM No. 7740/2026

Tara Mani

...Petitioner /Appellant(s)

Through: - Mr. Mr. Sandeep Bhat, Advocate

vs.

Radhey Krishan **...Respondent(s)**

Through: -

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT
31.10.2026

1. The petitioner, through the medium of the present petition, has challenged order dated 14.08.2026 passed by the learned Sub Judge (Special Mobile Magistrate), Udhampur (hereinafter referred to as the "trial Court"), whereby the application filed by the respondent/plaintiff seeking amendment of the plaint has been allowed.

2. It appears that the respondent/plaintiff had filed a suit against the petitioner/defendant before the trial Court, seeking a decree of permanent prohibitory injunction restraining the defendant from interfering with his land measuring 04 kanals and 04 marlas, comprised in Khasra Nos. 1205 and 1204, situated at Village Jib, Tehsil and District Udhampur. In the plaint, the plaintiff has claimed that he is one of the

co-owners and co-sharers of the suit land and that, by way of a private arrangement arrived at with the consent of all the other co-owners, the land has been adjusted, separated and partitioned for the purposes of its use, enjoyment and cultivation. According to the plaintiff, he has constructed a residential house on the portion of the suit land which has fallen to his exclusive share.

3. It has been pleaded that the defendant purchased a portion of the land adjacent to the suit land from one of the co-owners and co-sharers of the plaintiff and that he intends to annex a portion of the suit land adjacent to the land comprised in Khasra Nos. 1206 and 1207. It has further been pleaded that the land belonging to the defendant is situated on the northern side of the suit land. According to the plaintiff, the defendant fixed certain points/marks indicating the alignment of the boundary wall he intended to raise on his land, and the said marks cover a portion of the suit land as well. When the defendant was asked to refrain from interfering with the suit land, he threatened to raise the boundary wall according to his own choice and started digging its foundation.

4. The defendant filed his written statement, wherein he claimed that he had purchased land measuring 02 kanals and 18 marlas comprised in Khasra No. 1206 and land measuring 03 kanals comprised in Khasra No. 1207 min and he has been in lawful ownership and possession thereof for the last 50 years. It has been further submitted that the defendant has already covered the land which is in his exclusive and lawful possession, he has constructed a residential house thereon and now he intends to construct a boundary wall over his land, but the plaintiff has raised a baseless claim. It has also been submitted that the land owned and

possessed by the defendant has been purchased by him from one of the co-sharers of the plaintiff and that he has no intention of encroaching upon any portion of the land which has fallen to the plaintiff's share.

5. It appears that the defendant moved an application before the trial Court seeking appointment of a Local Commissioner for conducting spot inspection of the disputed site. The application was allowed, and the Commissioner, viz the Tehsildar, Udhampur, conducted the spot inspection through the revenue officials and submitted his report. As per the said report, encroachment of 16 marlas of land out of Khasra No. 1204 and 01 kanal and 04 marlas of land out of Khasra No. 1205 was found.

6. Upon receipt of the Commissioner's report, the respondent/plaintiff moved an application seeking amendment of the plaint so as to claim restoration of possession of 16 marlas out of the total land measuring 01 kanal and 11 marlas comprised in Khasra No. 1204 and 01 kanal and 04 marlas out of the total land measuring 02 kanals and 13 marlas comprised in Khasra No. 1205. The said application was resisted by the petitioner/defendant by filing objections thereto. However, the learned trial Court, vide the impugned order dated 14.08.2026, allowed the application and permitted the plaintiff to amend the plaint so as to incorporate the relief of restoration of possession in respect of the aforesaid portion of the suit land.

7. The petitioner has challenged the impugned order on the ground that the learned trial Court has exceeded its jurisdiction, as the proposed amendment alters the nature and character of the suit. It has been contended that permitting the plaintiff to convert a suit based on asserted

possession into one seeking recovery of possession would substitute an entirely different cause of action and, as such, the amendment is impermissible in law. It has further been contended that the Local Commissioner appointed in the case did not demarcate the disputed portion of the suit land and that the Commissioner's report cannot allow a fresh cause of action in favour of the plaintiff. It has also been contended that the alleged encroachment by the defendant upon the suit land does not constitute a subsequent development and, therefore, the learned trial Court has erred in allowing the application for amendment of the plaint.

8. I have heard learned counsel for the petitioner and perused record of the case.

9. Order VI Rule 17 of the Code of Civil Procedure (CPC) governs the law relating to amendment of pleadings. As per this provision, the Court has the discretion to permit either party to alter or amend its pleadings on such terms as may be just. It further provides that all such amendments as may be necessary for determining the real questions in controversy between the parties may to be allowed. The proviso to Order VI Rule 17 CPC, however, stipulates that no application for amendment shall be allowed after the commencement of trial unless the Court comes to the conclusion that, despite the exercise of due diligence, the party could not have raised the matter before the commencement of trial. Thus, before the commencement of trial, the Court has discretion to allow amendment of pleadings where such amendment is necessary for determining the real controversy between the parties. However, where an amendment is sought after the commencement of trial, the party seeking such

amendment is required to satisfy the Court that, despite exercising due diligence, it could not have sought the amendment before the commencement of trial. The primary object of allowing amendment of pleadings is to determine the real questions in controversy between the parties and to avoid multiplicity of judicial proceedings.

10. It is a settled law that, while considering an application for amendment of the plaint, the Courts are required to adopt a liberal approach, unless the proposed amendment causes irreparable injustice or prejudice to the opposite party or when it is sought with the intention of unnecessarily delaying the proceedings, or the proposed amendment seeks to withdraw an admission made in the pleadings. An amendment can also be refused if a party seeks to introduce a new cause of action which is already barred by limitation or fundamentally alters the basic structure or character of the suit.

11. Adverting to the facts of the present case, the plaintiff had initially instituted a suit for permanent prohibitory injunction against the defendant, claiming that the suit land was in his possession and that the defendant was attempting to interfere with the same. During the pendency of the suit, and before the commencement of trial, the defendant moved an application seeking appointment of a Local Commissioner, which was allowed by the trial Court. Accordingly, the Tehsildar was appointed as the Local Commissioner, who visited the spot and submitted his report. As per the report submitted by the Tehsildar, certain portions of the suit land were found to have been encroached upon by the defendant. This prompted the plaintiff to move an application seeking amendment of the plaint so as to incorporate the

relief of recovery of possession in respect of the portions of the suit land which, according to the Commissioner's report, have been encroached upon by the defendant. By way of the proposed amendment, the plaintiff intends to seek recovery of possession only to the extent of the alleged encroached portions of the suit land.

12. The question that arises for consideration is whether the proposed amendment changes the nature and character of the suit. This issue has been dealt with by the Supreme Court in the case of *Sampath Kumar v. Ayyakannu*, (2002) 7 SCC 559. In the said case, the Supreme Court held that merely changing the relief from injunction to possession, where said reliefs arise out of the same property dispute, does not fundamentally alter the basic structure or complexion of the suit. The Supreme Court further observed that forcing the plaintiff to withdraw the original suit and institute a fresh suit for possession would result in unnecessary delay and wastage of judicial time.

13. In view of the aforesaid legal position, merely because the plaintiff has sought the relief of recovery of possession in respect of the alleged encroached portions of the suit land, it cannot be said that the proposed amendment alters the basic structure or character of the suit, particularly when the relief sought by way of amendment pertains to the same property, which is the subject matter of the original suit.

14. The learned trial Court has correctly appreciated the factual and legal aspects of the matter while considering the application filed by the respondent/plaintiff seeking permission to amend the plaint. The discretion exercised by the learned trial Court at the pre-trial stage, in the facts and circumstances of the case, does not warrant interference by this

Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution, particularly when there is no perversity or illegality in the impugned order.

15. For the foregoing reasons, I find no merit in the present petition. The same is, accordingly, dismissed.

(SANJAY DHAR)
JUDGE

Jammu:
31.11.2026
Karam Chand

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

HIGH COURT
JAMMU & KASHMIR AND LADAKH