

# **Ram Shankar vs Commissioner Devi Patan Mandal Gonda 3 ... on 27 March, 2025**

**Author: Saurabh Lavania**

**Bench: Saurabh Lavania**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:17680

Court No. - 7

Case :- WRIT - C No. - 2485 of 2025

Petitioner :- Ram Shankar

Respondent :- Commissioner Devi Patan Mandal Gonda 3 Others

Counsel for Petitioner :- Girdhari Lal Shukla

Counsel for Respondent :- C.S.C.,Pankaj Gupta

Hon'ble Saurabh Lavania,J.

1. Supplementary affidavit is taken on record.
2. At the very outset, learned counsel for the petitioner says that one necessary party is left to be impleaded in this petition, as such, he may be permitted to implead the same during the course of the day.
3. The prayer aforesaid is acceded, as the same has not been opposed.

4. In view of above, learned counsel for the petitioner is permitted to implead the said party in the memo of this petition during the course of the day.

5. Heard Sri Girdhari Lal Shukla, learned counsel for the petitioner, Sri Dev Prakash Mishra, learned State counsel appearing for the respondent Nos. 1 to 3 and SriPankaj Gupta, learned counsel appearing for the respondent No. 4/Gaon Sabha concerned.

6. Notice to newly impleaded respondent No. 5 is dispensed with. It is in view of the fact that the land in issue, which is the subject matter of the suit, is the land of Gaon Sabha.

7. By means of this petition, the petitioner has sought the following main relief(s) :-

"i) Issue a writ order or direction in the nature of certiorari quashing of the impugned order dated 09.01.2025 passed by the opposite party no.1 by which he has rejected revision of the petitioner filed against the order dated 09.10.2024 passed by the opposite party no. 3 as contained in Annexure No. 1&2 to this Writ Petition.

(ii) Issues a writ order or direction in the nature of Mandamus to the opposite party no.2 to allow the application for amendment in the memo of suit moved by the petitioner."

8. Brief facts of the case in hand are to the effect that the petitioner filed a suit for declaration of rights under Section 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 (in short "Act of 1950") in the year 2006, which is pending as Case No. 135/105/74/61/53//43/227/2012-2013, Computerized Case No. T2013081521805 (Ram Shankar vs. State and others). This suit was filed impleading therein the State, Gram Panchayat and one Gobrey s/o Bhagauti as defendant Nos. 1, 2 and 3, respectively.

9. In the aforesaid suit, the petitioner preferred an application seeking amendment in the plaint under Order 6 Rule 17 CPC. The amendment, as sought in the application, is extracted hereunder:-

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10. The revenue court of first instance namely Sub-Divisional Magistrate (Tehsil Astar), Judicial, Mandal Devi Patan, District Bahraich (in short "SDM") rejected the application dated 30.07.2024 of the petitioner seeking amendment in the plaint filed on 30.07.2024 vide order impugned dated 09.10.2024 on two ground(s) i.e. (a) as to why the facts indicated in the application under Order 6 Rule 17 CPC were not indicated in the plaint; (b) the issues have already been framed, as is apparent from the operative portion of the order dated 09.10.2024, which is extracted hereunder:-

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11. The order dated 09.10.2024 passed by the SDM was challenged by the petitioner by means of a revision registered as Revision/Case No. 2045/2024, Computerized Case No. C202408000002045 (Ram Shankar vs. State and others) filed under Section 333 of the Act of 1950. This revision was dismissed vide order impugned dated 09.01.2025 passed by Additional Commissioner (Administration-I), Devi Patan Mandal, District Bahraich, which reads as under:-

"09.01.2025- ?????????? ?????????? ?????????? ???? ?????? 30.12.2024 ?? ?????????? ?? ?????????  
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12. The above quoted order dated 09.01.2025 indicates that the revision has been dismissed on the same grounds on which the SDM rejected the application dated 30.07.2024 of the petitioner seeking amendment in the plaint vide order impugned dated 09.10.2024.

13. In the aforesaid background of the case, the present petition has been filed before this Court.

14. Considered the submissions advanced by the learned counsel for the parties and perused the record.

15. The law on the issue of allowing and rejecting amendment applications is well settled, which can be deduced from the following paragraphs of the judgment passed by Hon'ble Apex Court in the case of Dinesh Goyal alias Pappu v. Suman Agarwal (Bindal) and others, 2024 SCC OnLine SC 2615.

"11. At this juncture, before proceeding to the merits of the case, let us consider the law relating to the amendments of pleadings.

11.1 The settled rule is that the Courts should adopt a liberal approach in granting leave to amend pleadings, however, the same cannot be in contravention of the statutory boundaries placed on such power. In North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (2008) 8 SCC 511 it was held as under:

"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. [Also see Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar (1990) 1 SCC 166.]"

11.2 Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17. Recently, this Court in Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. 2022 SCC OnLine SC 1128, after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles:?

(i) 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.

(ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.

(iii) Amendments, while generally should be allowed, the same should be disallowed if -

(a) By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.

(b) The amendment does not raise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)

(c) The amendment completely changes the nature of the suit;

(d) The prayer for amendment is malafide,

(e) By the amendment, the other side should not lose a valid defence.

(iv) Some general principles to be kept in mind are -

(I) The court should avoid a hyper-technical approach; ordinarily be liberal, especially when the opposite party can be compensated by costs.

(II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new approach.

(III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint.

12. The question that we have to consider, in the above backdrop is whether the High Court fell in error in allowing the application seeking leave to amend pleadings, in

contravention of the statutory language.

13. By way of the amendment, what is sought to be done is, to question the validity of the Will, on the basis of which, the defendant sought to have the suit dismissed, while also expanding the scope of adjudication of the suit to include movable property. It has to be then, demonstrated that - (a) determination of the genuineness of the Will is the necessary course of action in determining the issues inter se the parties; and(b) given the finding of the court below that the application was presented post the commencement of the trial, it could not have been, despite due diligence, presented prior to such commencement.

14. Be that as it may, the overarching Rule is that a liberal approach is to be adopted in consideration of such applications. [See also : Sanjeev Builders(supra);Rakesh Kumar Agarwal v. Rajmala Exports Pvt. Ltd. (2012) 5 SCC 337; Usha Balasaheb Swami v.Kiran Appaso Swami (2007) 5 SCC 602; B.K. Narayana Pillai v. Parmeswaran Pillai (2000) 1 SCC 712."

16. Paragraphs of the subsequent judgment passed by the Hon'ble Apex Court in the case of Basavaraj v. Indira and others, (2024) 3 SCC 705, referred by Sri Pankaj Gupta, learned counsel for the Gaon Sabha concerned, are as under:-

"10.The proviso to Order 6 Rule 17CPC provides 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. In the case in hand, this is not even the pleaded case of Respondents 1 and 2 before the trial court in the application for amendment that due diligence was there at the time of filing of the suit in not seeking relief prayed for by way of amendment. All what was pleaded was oversight. The same cannot be accepted as a ground to allow any amendment in the pleadings at the fag end of the trial especially when admittedly the facts were in knowledge of Respondents 1 and 2-plaintiffs.

11.The relevant paragraphs of the application seeking amendment of the plaint are reproduced hereunder:

"2. That, due to oversight and by mistake the plaintiff was unable to sought relief declaration of decree as null and void and unable to pay required court fee some unavoidable circumstances and the proposed amendment is very essential for deciding the matter in dispute.

3.\*\*\*

4. That, if the proposed amendment is allowed no prejudice will be cause to the other side, on the other hand if it is not allowed then the deponent will be put to great loss

and will also leads multiplicity of litigations. Hence it is just and proper to allow the proposed amendment to meet the ends of justice." (sic)

12. This Court in *M. Revannav. Anjanamma* [*M. Revannav. Anjanamma*, (2019) 4 SCC 332 : (2019) 2 SCC (Civ) 338] opined that an application for amendment may be rejected if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. Order 6 Rule 17CPC prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier. It is not a matter of right. Para 7 thereof is extracted below : (SCC p. 335) "7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order 6 Rule 17CPC virtually prevents an application for amendment of pleadings from being 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 the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money."

(emphasis supplied)

13. Initially, the suit was filed for partition and separate possession. By way of amendment, relief of declaration of the compromise decree being null and void was also sought. The same would certainly change the nature of the suit, which may be impermissible.

14. This Court in *Revajeetu* case [*Revajeetu Builders & Developers v. Narayanaswamy & Sons*, (2009) 10 SCC 84 : (2009) 4 SCC (Civ) 37] enumerated the factors to be taken into consideration by the court while dealing with an application for amendment. One of the important factor is as to whether the amendment would cause prejudice to the other side or it fundamentally changes the nature and character of the case or a fresh suit on the amended claim would be barred on the date of filing the application.

15. If the amendment is allowed in the case in hand, certainly prejudice will be caused to the appellant. This is one of the important factors to be seen at the time of consideration of any application for amendment of pleadings. Any right accrued to the opposite party cannot be taken

away on account of delay in filing the application.

16. In the case in hand, the compromise decree was passed on 14-10-2004 in which the plaintiffs were party. The application for amendment of the plaint was filed on 8-2-2010 i.e. 5 years and 03 months after passing of the compromise decree, which is sought to be challenged by way of amendment. The limitation for challenging any decree is three years (reference can be made to Article 59 in Part IV of the Schedule attached to the Limitation Act, 1963). A fresh suit to challenge the same may not be maintainable. Meaning thereby, the relief sought by way of amendment was time-barred. As with the passage of time, right had accrued in favour of the appellant with reference to challenge to the compromise decree, the same cannot be taken away. In case the amendment in the plaint is allowed, this will certainly cause prejudice to the appellant. What cannot be done directly, cannot be allowed to be done indirectly.

17. Further, a perusal of the memo of parties in the suit in question and in the compromise decree shows that the plaintiffs i.e. Sharnamma alias Mahananda wife of Basvaraj and Mahadevi wife of Shivsharnappa Nasi in Original Suit No. 401 of 2003 are not party to the present litigation. Even if on any ground the amendment could be permitted, still no relief could be claimed with reference to setting aside of the compromise decree as all the parties thereto were not before the Court in the suit in question."

17. Upon due consideration of the aforesaid, this Court finds that interference of this Court is required in the matter. It is for the following reasons:-

- (i) The amendment as sought, to the view of this Court, would not change the nature of the suit.
- (ii) The amendment sought is in addition to what has been stated in paragraph 2 of the plaint.
- (iii) By incorporating the facts, as indicated in the application for amendment, the petitioner is not introducing different, new or inconsistent facts nor he is changing the fundamental character of the suit.

18. For the reasons aforesaid, the orders impugned dated 09.10.2024 and 09.01.2025 are hereby set-aside. The application for amendment of the petitioner is allowed subject to payment of cost of Rs. 2,000/-. The petitioner's counsel is permitted to incorporate necessary amendment in the plaint, as prayed for in the application filed for this purpose, within a period of three weeks from today, failing which, he would not be permitted to incorporate the said amendment.

19. The instant petition is allowed in above terms.

20. Before parting, this Court feels it appropriate to observe that it is expected from the SDM/revenue court of first instance concerned to conclude the proceedings of the case/suit pending before it most expeditiously say within a period of six months from the date of production of



certified copy of this order, as the suit was instituted wayback in the year 2006.

Order Date :- 27.3.2025 Arun/-