HCJDA-38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

Writ PetitionNo.4183 of 2022

Maqbool Ahmad

versus

Addl. District Judge and others

JUDGMENT

Date of hearing	11-12-2024
Petitioner by:	Malik Javaid Akhtar Wains and Mr. M. Imran Shahzad Bhatti, learned ASC.
Respondents No. 3(i) to 3(v) by:	Mr. M. Tariq Mahmood Dogar, learned Advocate.

Sultan Tanvir Ahmad, J:–This petition is directed against the decisions dated 26.11.2021 and 23.02.2022 passed by learned Civil Court and learned Additional District Judge, Khanewal.

2. Arif Ali-*deceased*, now being represented through his legal heirs i.e. respondents No. 3(i) to 3(v) (the '***respondents***'), filed a suit dated 06.09.2016 (the '***suit***'). The then defendant No. 2 (Mst. Hanifan Bibi) passed away and as a result thereof, amended suit was filed on 05.04.2017 (the '***amended suit***') impleading defendants No. 2-A to 2-G in the array of parties.

Evidence of the parties has already been recorded. On 18.10.2021 an application under Order VI Rule 17 of the Code of Civil Procedure-1908 (the '***Code***') was filed by the *respondents*, with the prayer that they may be permitted to insert the word 'declaration' in the heading as well as to allow them to make amendment to the effect that order dated 25.07.1995 passed by the District Collector and the subsequent actions of the revenue authorities are beyond jurisdiction. The learned Civil Court allowed the application vide order dated 26.11.2021. The petitioner filed Civil Revision No. 26-2021 which was dismissed by the learned revisional Court vide judgment dated 23.02.2022. Being aggrieved from the same, the present writ petition has been instituted.

3. Malik Javaid Akhtar Wains, learned Advocate for the petitioner has submitted that the *amended suit* set forth by the *respondents* is for permanent injunction and the *respondents* remained silent for a period of five years but when both parties closed their respective evidence, the *respondents* with *mala fide* and in order to fill-up gaps, have filed the application for amendment. He has referred to the proposed amendments regarding raising a challenge to order dated 25.07.1995 of the District Collector as well as *fard-bader* and stated that it will introduce a new cause of action as well as the whole complexion of the *amended suit* shall be changed if the *respondents* are permitted to make the proposed amendments, thus, the learned Courts below have committed grave error. He referred to case titled "*Mst.*

Imam Hussain versus Sher Ali Shah and others" (**1994 SCMR 2293**) and stated that belated attempt of the plaintiff to amend the plaint is not warranted. Learned counsel for the petitioner has relied upon case titled "*Mst. Noor Khatoon through Legal Heirs and another versus Muhammad Shafi*" (**2003 SCMR 542**) and stated that introduction of new facts and setting-up different plea in conflict to the pleadings, changing the character of any suit, could not be allowed. The learned counsel has further relied upon cases titled "*Atlantic Steamer's Supply Company versus M. V. Titisee and others*" (**PLD 1993 Supreme Court 88**) and "*Ghulam Haider versus Muhammad Ayub*" (**2001 SCMR 133**).

4. Mr. M. Tariq Mahmood Dogar, learned Advocate for the *respondents* has stated that the provisions of Order VI Rule 17 of the *Code* are required to be construed broadly and such power should be exercised liberally; otherwise, it can jeopardize the interest of the parties involved in the case; that the special circumstances of the case required exercising the discretion and the learned two Courts below have not made any mistake in using the discretion keeping in view the principle settled by this Court in case titled "*Faisalabad Electric Supply Company Limited versus Munir Ahmad Ranjha and others*" (**2020 CLC 68**). He has made reference to the guidelines in the said case and stated that the amendments which do not cause injustice to the other side and when they are necessary to determine the real question in controversy should normally be allowed.

Mr. Dogar has argued that no new cause of action is being introduced through the proposed amendments. He has further relied upon cases titled "*Iftikhar Ahmad versus Muhammad Anwar and others*" (**2024 CLC 1735**) and "*Gulzar Ahmad versus Additional District Judge and others*" (**2019 CLC 1432**).

5. I have heard the learned counsel for the parties in detail on questions whether the amendments sought in the plaint, in facts and the circumstances of the present case, ought to have been allowed or not.

6. Order VI Rule 17 of the *Code* provides 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. The Supreme Court in case titled "*Mst. Ghulam Bibi and others versus Sarsa Khan and others*" (**PLD 1985 Supreme Court 345**) observed that this rule can be divided into two parts. In the cases falling under the first part, the Court has discretion but under the second part i.e. when the amendment is necessary for the purpose of determining the real question, it becomes the duty of the Court to permit the amendment, however, subject to an important condition that the nature of the suit is not changed by amendment. In *Mst. Ghulam Bibi* case (*supra*), the Supreme Court of Pakistan was dealing with a matter where the heading of the plaint was sought to be amended to specific performance from the declaration. Such change in heading had similar

effect to the prayer clause. The Honourable Supreme Court allowed the application. The principle settled in this case was then followed in several cases by the Supreme Court and the High Courts of Pakistan.

7. In case titled "*Mst. Zubaida Bibi versus Mst. Hashmat Bibi and 2 others*" (**1993 SCMR 1882**), the Supreme Court has held as under:-

> *"4. On behalf of the appellant an application has been moved before us that she should be permitted to amend the plaint so as to seek the relief of specific performance of the agreement of 22.5.1978. In support of her application reliance has been placed on the judgment of this Court in the case of Ghulam Bibi v. Sarsa Khan (PLD 1985 SC 345). After hearing the learned counsel we find that the appellant is seeking this new relief entirely on the basis of the assertions already made in the plaint and thus the amendment will not change the nature of the suit. In the circumstances we allow the prayer for amendment. Accordingly, we accept the appeal, set aside the judgments of the courts below and remand the suit to the trial Court for a fresh decision. The costs in this appeal will abide by the final event."*
>
> *(Underlining is added)*

Learned Peshawar High Court in "*Nizam Ullah versus Mst. Gohar Taja and others*" (**2003 YLR 2008**) permitted amendment in plaint when found that the prayer clause for specific performance of contract was essential and sought amendment was not motivated by any *mala fide*. The relevant paragraph reads as under:-

> *"5. It is by now well-settled that amendment in pleadings cannot be refused if this is emanating from the facts mentioned in the plaint especially when it*

> *does not tend to change the cause of action.* ***No doubt the petitioner primarily instituted a suit for declaration but later on when he came to know that the form of suit was not proper and that prayer for specific performance of contract was essential for its success, he accordingly made an application for amendment in plaint which could not have been refused by the Courts below particularly when there was nothing on the record to show that <u>it was motivated by any mala fide</u>*** *and that when it emanated from the same bundle of facts narrated in the plaint constituting the cause of action in the suit…"*
>
> (Emphasis supplied)

8. A learned Division Bench of the Peshawar High Court in case titled "*<u>Muhammad Zaman versus Siraj-ul-Islam and 11 others</u>*" (**2013 YLR 1548**) has observed that the word "alter" used in the above rule gives a bit wider power than the word "amendment", if Court comes to the conclusion that the same is necessary to do the complete and substantial justice. I would like to reproduce the following extract from the said judgment:-

> *"A suit for specific performance can be changed into a suit for declaration and vice versa. Similarly a relief for declaration can be added in a suit for permanent injunction and all such changes would not change nature of the suit.* ***The word "alter" used in the rule gives it a bit wider aspect than word amendment. If a Court comes to the conclusion that amendment in the pleadings was necessary to do the complete and substantial justice between the parties, then it can make an order in this regard to achieve the end of justice and to prevent the abuse of process of Court.*** *The*

> *landmark judgments of the Apex Court in the case of* ***Mst. Ghulam Bibi and others v. Sarsa Khan and others*** *(PLD 1985 Supreme Court 345) can be referred in this regard."*
>
> *(Emphasis supplied)*

This Court in *Iftikhar Ahmad* case (*supra*) has recently considered the aspect of delay in applying for amendment while keeping in view the wording of the rule which provides that amendment can be made "at any stage of the proceedings". This Court has reached to the decision that the amendment can be permitted even in appeal or revisional jurisdiction, when it is just. The relevant part reads:-

> *"...Moreover amendment can be allowed while ignoring delay whatsoever, even at any stage of proceedings in the trial, and in certain cases amendments can be permitted at the stage of appeal or even in the revisional jurisdiction, however, keeping in view the beneficial rule, that proposed amendment is expedient for the purpose of determining the real questions in controversy between the parties and it is not changing the nature of pleadings. An alteration in the relief does not ordinarily change the character or substance of the suit if it is based on the same averments, and if such an amendment is allowed, no injustice could be done to the other party. It is also well-established tenet that pursuant to Order VI, Rule 17, C.P.C., amendments to pleadings are permissible at any juncture of the legal proceedings, provided they serve to crystallize the substantive issues at hand without transmuting the fundamental character of the original pleadings. Reliance is placed on Muhammad Saleem Naseem v. Additional District Judge, Dunyapur and 12 others (2021 CLC 87) and Ahmed Bakhsh v. Imam Bakhsh and others (2023*

CLC 1076).”

9. The Supreme Court of Pakistan has also discussed and concluded that amendment should be liberally allowed provided that the same does not cause injury to the other side. The provisions are intended to secure the proper administration of justice and to serve this purpose full power of amendment must be enjoyed; nonetheless, no power has been given to the Courts to enable the parties to set up one distinct cause of action to be substituted for another or to change the subject matter of the suit. Reference is made to case titled “*Syed Akhlaque Hussain and another versus Water and Power Development Authority, Lahore*” (**1977 SCMR 284**).

10. The question of limitation can also be an important factor, when necessitated by facts of the case, while dealing with the application of amendment. When legal rights have accrued to the other side by elapse of time the power to amend pleadings should not be exercised as a rule. I would like to refer to case titled “*L. J. Leach and Co. Ltd. and another versus Messrs. Jardine Skinner and Co.*” **(S) A. I. R. 1957 S. C. 357**, where the following has been observed:-

> *“(16) It is no doubt true that Courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interests of justice. In Charan Das v. Amir Khan, 47 Ind App 255 (AIR 1921 PC 50) (A) the Privy Council*

observed :

> *"That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where the effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases where such considerations are out-weighed by the special circumstances of the case…"*

11. The main endeavour of the learned counsel for the petitioner is that permitting to convert the *amended suit* from injunction to declaration or allowing the *respondents* to seek declaration along with injunction would amount to changing the nature of the *suit*. However, I have observed that the *suit*, originally filed on 06.09.2016, was for declaration along with seeking relief of permanent injunction etc. When one of the defendants passed away, permission was granted to make the corresponding amendment but somehow the word "declaration" in the heading was left to be included. Learned counsel for the petitioner when confronted with this position, he stated that for about half a decade the plaintiff remained silent and the proceedings took place in pursuance thereof and evidence was recorded, which reflects *mala fide* on the part of the plaintiff. To me this mistake does not appear to be merely on the part of the plaintiff. Not just litigants in dispute and their pleaders should have remained vigilant but it was also for the Courts to see that it is not permissible by law to make any amendment at own and without leave of the Court. This went unnoticed by all, therefore, I am not

in agreement with Mr. Wains as to this allegation of *mala fide*. In the cases titled "*Dausa and others versus Province of the Punjab and others*" (**2016 SCMR 1621**) and "*Nazir Ahmad and another versus Sarfraz Ali and 2 others*" (**PLD 2013 Lahore 309**), it has been observed that for dispensation of complete justice the Court should not hesitate in allowing the amendment to cure the formal defect. The permission to cure the formal defect should be allowed liberally to promote the fair adjudication. Paragraph No. 10 of the *Nazir Ahmad* case (*supra*) is as under:-

> *"10. The power to grant amendment, being procedural is to be used for the purpose of dispensation of complete justice and the Court may not hesitate in allowing the amendment to cure the formal defects, which is bona fide and has been occurred due to mistake of fact or misapprehension. The case-law relied upon by the learned counsel for the petitioners is fully applicable to the facts and circumstances of the present case. In my considered opinion to do substantial justice amendment is necessary for the purpose of determining the real matter in controversy."*

The relevant part of *Dausa and others* case (supra) reads:-

> "*…The amendment application (C.M.A. No.3811-L of 2006) by the appellants/ plaintiffs for incorporating the correct date of the mortgage in the plaint does not alter the nature of the case pleaded by the plaintiffs. The prayer for the incorporation of an undisputed fact is of a formal nature and brings factual clarity which promotes the fair adjudication of the controversy and the interest of justice. Compliance with the said criteria satisfies the principles for*

> *allowing amendment in pleadings even by the highest Court. [Ref. Ghulam Nabi v. Nazir Ahmad (1985 SCMR 824); Secretary to Government (West Pakistan) v. Abdul Kafil (PLD 1978 SC 264)]. The C.M.A. No. 3811-L of 2006 for the amendment prayed is accordingly allowed."*

12. After analyzing various decisions on the subject including the above referred judgments some important factors, which are only illustrative and not exhaustive, that can be kept in my mind while dealing with the application for amendment are (i) the intention of the applicant seeking to amend pleadings; (ii) the question of limitation if applicable; (iii) refusal or acceptance of amendment should not lead to injustice or injury to opponent side; (iv) efforts should be made to avoid multiplicity of litigation; (v) the nature of the suit and cause of action originally set-up and (vi) if the amendment is necessary for the purpose of determination of the real question in controversy between the parties provided subject matter of suit remains unchanged.

13. The plaintiff is essentially seeking relief that as per mutation No. 1005 dated 31.12.1996, he is the owner of the disputed property and the earlier round of litigation initiated in the year 1970 which was decree on 31.10.1978, is not being observed by the revenue authorities. Besides the amendment as to addition of word 'declaration' in the heading of the *amended suit* which is already dealt with in detail, the sought amendments relate to those orders or proceedings of the revenue which are allegedly in defiance of the decree dated 31.10.1978. This hardly has any bearing on the subject matter or the nature of

the plaint.

14. For the aforesaid reasons, I am of the view that the learned two Courts below have not erred in accepting the application for amendment in the plaint. Accordingly the judgment and the order of the learned two Courts below are ***upheld***. Considering the facts and circumstances of this case, the learned trial Court to dispose of the case within the earliest possible time and preferably within six months from the date of communication of this judgment. Observations made above shall not prejudice the remaining steps towards the conclusion of trial or final outcome. There is no order as to costs.

(Sultan Tanvir Ahmad)
Judge

Announced in open Court on 24.12.2024.

Approved for reporting.

*Iqbal**

Judge