

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

C.R. No.20763 of 2024

Iftikhar Ahmad

Versus

Muhammad Anwar, etc.

J U D G M E N T

Date of hearing: 30.05.2024.

Applicant by: Mian Haseeb ul Hassan, Advocate.

Respondent by: Nemo.

M/s. Muhammad Saad Bin Ghazi and
Chaudhry Faza Ullah, Assistant Advocates
General on Court's call.

MUHAMMAD SAJID MEHMOOD SETHI, J.:

Through instant petition, petitioner has assailed vires of order dated 02.3.2024 passed by learned Addl. District Judge, Sialkot, whereby application of respondent No.1 for amendment of the pleadings was allowed and consequently, Trial Court's consolidated judgment and decree dated 30.03.2003 was set aside and matter was remanded.

2. Briefly stated the facts of the case are that respondent No.1 instituted two suits: (i) suit for declaration along with permanent injunction against petitioner; (ii) suit for declaration for permanent injunction against respondents No.2 to 8. In the first suit, he contended that he was owner in possession of property measuring 51 Kanals 15 Marlas described in Khewat No.57, Khatooni Nos.159, 160, 329 and 331, Khasra No.868/613, 865/612, 605, 606, 618, 619, 620, 180, 761/1/9, 762/189, 164/910, 609, 142 as per Record of Rights for the years of 2010-11 situated at Village Dulekhiki and petitioner Iftikhar Ahmed had no connection with it; that respondent No.1 constructed a boundary wall over above said property, dividing it into two parts

with a *kacha* path; that petitioner had already occupied some land of the aforementioned property on the bank of Chenab river and intended to raise construction over it and further sell it out by showing himself as owner; and that petitioner was repeatedly asked not to interfere with the suit property but he refused. In the second suit for declaration alongwith permanent injunction, he alleged that respondent No.2/Mureed Hussain raised construction over suit property even in presence of status quo order, without any lawful authority. Both the suits were consolidated, and the learned Trial Court vide consolidated judgment and decree dated 30.3.2023 dismissed the suits as they did not meet the parameters of Section 42 of the Specific Relief Act, 1877. Feeling aggrieved, respondent No. 1 filed an appeal before the learned Addl. District Judge, Sialkot. He also filed an application for amendment of the pleadings, which was accepted by the learned Addl. District Judge and consolidated judgment and decree of the Trial Court was set aside vide order dated 02.3.2024 and the matter was remanded back to the Trial Court with the direction that both the suits shall be deemed to be pending and the Trial Court shall proceed with the suits in accordance with law after receiving amended pleadings.

3. Learned counsel for petitioner submits that possession of the petitioner was admitted even prior to institution of the suits because complaints filed by respondent No.1 under the provisions of Illegal Dispossession Act, 2005, had failed. He further submits that the application was barred by limitation and not maintainable. He further submits that the amendment of the pleadings would change nature and character of the suits. Reliance is placed on Saddaruddin (since deceased) through LRs v. Sultan Khan (since deceased) through LRs and others (2021 SCMR 642) and Sultan Muhammad and another v. Muhammad Qasim and others (2010 SCMR 1630).

4. Heard. Available record perused.
5. Respondent No.1 instituted a suit for declaration and permanent injunction alleging ownership and possession over the suit property and sought amendment in the pleadings by contending that his peaceful possession was snatched during pendency of the suits. The addition of relief of possession in view of alleged development cannot be termed as setting up of a new case. In fact, the factum of dispossession gels well with other facts contained in the plaints. By no stretch of imagination, it can be considered a change in the nature and complexion of the suit. The natural result of declaration if succeed would be that consequential relief has to be given by the Court even same was not claimed and the Court in such circumstances is bound to call upon the party to amend the plaint to the extent of possession and direct him to pay the Court-fee. Reliance is placed on Mst. Arshan Bi through Mst. Fatima Bi and others v. Maula Bakhsh through Mst. Ghulam Safoor and others (2003 SCMR 318), Altaf Hussain alias Mushtaq Ahmed v. Muhammad Din and others (2010 CLC 1646), Asif Hussain and another v. Mst. Bakho alias Bakhto (deceased) through Legal Heirs (2021 YLR 573), Khalid & Company through Proprietor v. Cantonment Board, Malir through President, Commander Station Headquarter, Malir Cantonment and Cantonment Executive Officer, Karachi (PLD 2002 Karachi 502) and Muhammad Anwar and another v. Additional District Judge, Toba Tek Singh and 4 others (2012 CLC 1976).

In Muhammad Mian v. Syed Shamimullah and 2 others (1995 SCMR 69), a Hon'ble Supreme Court of Pakistan has rendered following observations:-

"The application has been contested by the respondents. It has been stated that the, application has been filed after long delay. The suit was filed in the year 1979, but the relief of possession was not claimed, therefore, the application for amendment may not be allowed at this belated stage. The amendment claimed by the

petitioner will not alter the nature of the suit or relief. The relief of possession is a consequential relief for declaration. This relief arises out of the claim of the appellant. The amendment sought by the appellant is only of technical nature. No further evidence is required. In' Ahmad Din v. Muhammad Shafi (PLD 1971 SC 762) it has been observed that "the suit could not fail merely by reason of fact that consequential relief by way of possession had not been claimed. If the suit was otherwise maintainable and the appellant was otherwise entitled to the relief it was open to the Courts to allow him to amend the plaint by adding a prayer for possession and paying the appropriate ad valorem court-fees." In Zubaida Bibi v. Hashmat Bibi (1993 SCMR 1882) the prayer for amendment of plaint was allowed. We, therefore, allow the amendment at the cost. of Rs.5,000. The appellant shall pay ad valorem court-fee. As regards the question of limitation, the High Court has dismissed the petition on the ground that the revision petition was filed after the lapse of about 12 months. The High Court itself observed that no period of limitation is prescribed for filing revision application, but it can only be filed within a reasonable time."

6. Needless to say that an amendment in pleadings may be allowed where it avoids multiplicity of suits, does not alter the subject matter or cause of action, does not take away any accrued right, entitles the plaintiff to further relief due to subsequent events, amplifies the cause of action, serves the interests of justice, triggers a new statutory line of defense due to the plaintiff's evidence, causes no injustice, or addresses an inadvertently omitted relief. However, this list is not exhaustive. Order VI, Rule 17, C.P.C. contemplates that the Court may at any stage of the proceedings allow the parties to alter or amend the pleadings in such manner as may be just and all amendments which may be necessary for the purpose of determining the real question in controversy between them. It is settled rule that the application under Order VI, Rule 17, C.P.C. can be entertained and allowed at any stage of the proceedings if the same is necessary for effective decision thereof. 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 CPC, 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).

7. Learned counsel for petitioner has failed to point out any illegality, material irregularity or jurisdictional defect in the impugned order, hence, no interference in exercise of revisional jurisdiction is warranted.

8. For what has been discussed above, this petition being devoid of any merits is dismissed.

(Muhammad Sajid Mehmood Sethi)
Judge

Approved for Reporting

Judge