



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

ON THE 17th OF JULY, 2025

MISC. PETITION No. 5648 of 2024

NARAYAN SINGH AND OTHERS

Versus

SUJAN SINGH AND OTHERS

Appearance:

Shri Nilesh Sharma - Advocate for the petitioner.

Shri Harshal Khalane, learned counsel for the respondent [R-1].

Shri Apoorv Joshi - Panel Lawyer for the respondent/State.

ORDER

Heard on admission.

This is a petition under Article 227 of Constitution of India, whereby the petitioner/plaintiff has challenged the order dated 29.08.2024 passed by Civil Judge - Class I, Senior Division, Depalpur, District Indore, whereby the application under Order VIII Rule 1(3) of C.P.C filed by the petitioners for taking the document on record has been rejected and the application under Order VI Rule 17 of C.P.C praying for amendment of written statement has also been rejected.

2. Respondent no.1/plaintiff has filed a suit for declaration, partition, possession and permanent injunction with regard to Agricultural land bearing survey Nos.62/1, 63, 67/3, 363, 365, 61, 62/3, 67/1 situated at Village Seiwani, Tehsil - Depalpur, Indore against petitioners/defendant no.1,2 and respondent no.2&3. Upon the pleadings raised by both the parties learned trial Court framed issues in the matter and the case was fixed for further process. Two applications, one under Order VIII Rule 1 of C.P.C for taking document on record and another



application under Order VI Rule 17 of C.P.C for carrying out necessary amendment in written statement was filed by the petitioner, which was opposed by the respondent. Learned trial Court after hearing both the parties, rejected both the applications filed by the petitioner vide order dated 29.08.2024. Being aggrieved by the aforesaid order the present petition has been filed.

3. Learned counsel for the petitioner submitted that the proposed amendments are necessary for adjudication of the suit and they are also related to the partition suit and are necessary for the purpose of determining the controversy between the parties. By this amendment application the petitioner has pleaded that the land bearing survey number 389(1) and 394(2) admeasuring 0.9590 and 0.6310 hectare respectively are mutated in the name of the plaintiff's wife with her consent, hence this defence is required to be amended. Likewise, the documents to be taken on record are related to partition suit as it is requested in amendment application in pleading of written statement regarding the aforesaid documents. On this aspect counsel relied upon the order of this Court passed by in the case of *Mangilal & Ors. vs. Dambarlal and another reported as 2007(4) MPLJ 200* so also reliance is placed on the judgment of *Rajesh Kumar Aggarwal vs. K.K. Modi and Ors., reported in (2006) 4 SCC 385*. Counsel prayed for setting aside the impugned order.

4. Learned counsel for the respondent vehemently opposed the petition and submitted that proposed amendments were well within the knowledge of the defendant since the inception of the suit and hence the said amendment should not be allowed, therefore, he prayed for rejection of the petition.

5. I have heard learned counsel for the parties and perused the record.

6. Considering the contentions of the parties, the provisions of Order VI Rule 17 of C.P.C is required to be mentioned here under:



ORDER - VI RULE 17

" 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:**

Provided 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."

7. On going through the aforesaid provisions, it is evident that Order VI Rule 17 of C.P.C consists of two parts whereas the first part is discretionary which rests upon the Court's leave. *The second part is imperative and it enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.* Therefore, the said proviso is only applicable for first part of the aforesaid provisions, which is discretionary. On this aspect the law laid down by Hon'ble Apex Court in the case of ***Rajesh Kumar Aggarwal vs. K.K. Modi (Supra)*** is condigned to be quoted here under:

"12. Order VI Rule 17 consists of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

13. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be



permitted to be incorporated in the pending suit.

14. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court."

8. The co-ordinate bench of this High Court in the case of *Mangilal & Ors. vs. Dambarlal (Supra)* has also endorsed the aforesaid judgment and ordained as under:-

"4. I have heard learned counsel for the parties at length. Perused the material available on the record. From a bare reading of the plaint (Annexure P/1), it is clear that the relief claimed in the suit was confined only to agricultural lands bearing Surveys Nos. 2877, 2878, 2879 admeasuring 3.32 Hect. of 'Khata No. 716 and Survey Nos. 339, 1210, 1250, 2028, 2874, 2875 and 2876 admeasuring 8.17 Hect, of 'Khata' No. 717. No relief was claimed with respect to the Shop No. 44 situated in the premises of "Krishi Upaj Mandi Samiti, Cant, Neemuch. One of the amendment proposed in the application was in relation to Shop No. 44, as aforesaid. I am of the view that learned trial Court was right in rejecting the said amendment because that would certainly change the nature of the suit, if the plaintiff was allowed to incorporate the amendment in the plaint. However, so far as amendment proposed



in relation to the agricultural holdings, as mentioned hereinabove, the amendment does not change the nature of the suit nor it could be said to be belated. No doubt, it is true that after the amendment in the Civil Procedure Code in the year 2002, the amendments in the pleadings should be made at the earliest stage, but there is no embargo to amend the pleadings even if the suit has crossed the stage as contemplated under the Proviso to Order VI Rule 17 of the Civil Procedure Code. Even after the amendment, Order VI Rule 17 of the Civil Procedure Code is directory not mandatory. Please see 2006(3) MPLJ (SC) 215 = (2006) 4 SCC 385, Rajesh Kumar Aggarwal vs. K. K. Modi and others.

5. In view of foregoing discussion, this writ petition is partly allowed to the extent indicated hereinabove. Now, the plaintiff shall carry out the amendment in the plaint as contained in Para 3 of the application dated 21-8-2005 for amendment and the relief clause relating only to the agricultural lands. The respondent may also, if so desire, make consequential amendment in the written statement. Thereafter, trial Court shall proceed to decide the matter in accordance with law. There shall, however, be no order as to costs. Petition partly allowed."

9. In view of the aforesaid law and looking to the fact that this is a partition suit and all property should be mentioned in the suit as well, the amendment regarding other survey numbers cannot be disallowed at the earlier stage. On the basis of delay the amendment cannot be rejected. Be that as it may, the case is at the stage of pending evidence, plaintiff witness have not been cross examined yet. So far as the delay mentioned by the defendant is concerned, a cost of Rs.5000/- would be appropriate.

10. In so far as the application under Order VIII Rule 1(3) of CPC is concerned, this application has been filed for furnishing additional documents of



revenue entries which are related to additional pleadings regarding survey Nos.389(1) and 394(2). In this regard the application under Order VI Rule 17 of CPC is already allowed by this Court as such the application under Order VIII Rule 1(3) is also liable to be allowed.

11. Accordingly, the petition is allowed to the extent indicated here-in-above. Upon furnishing a cost of Rs.5000/- before the concerned trial Court, the petitioner is permitted to carry out necessary amendment in the written statement and the trial Court is also directed to take the documents filed by the petitioners on record.

Certified copy, as per Rules.

(PREM NARAYAN SINGH)
JUDGE

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