



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5310-2024(O&M)
Date of decision: 22.09.2025

Sudha

... Petitioner

Versus

Hargian Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Varshit Garg, Advocate,
for the petitioner.

Mr. Divyam Singh, Advocate,
for the respondent.

VIKRAM AGGARWAL, J. (ORAL)

The present revision petition, preferred under Article 227 of the Constitution of India, assails order dated 30.08.2024, passed by the Civil Judge (Jr. Divn.), Assandh, vide which the application filed by petitioner/plaintiff under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC') was dismissed.

2. A suit for permanent injunction was filed by the petitioner/plaintiff. It was claimed that vide mortgage deed dated 20.08.2018, the respondent/defendant had mortgaged his land measuring 6 kanals 15 marlas, situated in Village Ardana, Tehsil Assandh, District Karnal (hereinafter referred to as the '**suit land**') in favour of the petitioner/plaintiff for a period of two years, i.e. 18.08.2018 to 18.08.2020, for a consideration of Rs.5,00,000/-. Possession of the suit land had been delivered. It was claimed that the respondent/defendant had been threatening to interfere in the



possession of the petitioner/plaintiff over the suit land, as a result of which the suit (Annexure P-1) was instituted.

3. The suit was opposed by way of a written statement (Annexure P-2), wherein it was contended that the mortgage deed was an unregistered document, which was required to be compulsorily registered and that being so, was not admissible in the eyes of law. It was also averred that the mortgage deed dated 20.09.2018 was an ambiguous and uncertain document and did not provide a complete description of the suit land. In fact, the execution of the mortgage deed was denied.

4. Vide order dated 29.07.2022 (Annexure P-3) issues were framed. During the pendency of the suit, an application under Order 6 Rule 17 read with Section 151 CPC was moved seeking amendment of the plaint to convert it into a suit for recovery. The stand taken was that the mortgage period had expired and the petitioner/plaintiff wanted to recover the sum of Rs.5,00,000/- paid at the time of mortgage deed. Despite several requests, the respondent/defendant had neither taken back the possession nor refunded the amount. The application for amendment was opposed by way of a reply (Annexure P-5), again contending that the mortgage deed was a forged and fabricated document. It was also averred that the application for *ad interim injunction* moved by the petitioner/plaintiff had been dismissed vide order dated 29.07.2022, against which an appeal had been preferred and the same was also dismissed on 04.12.2023. It was further averred that the application for amendment had, therefore, been filed after having remained unsuccessful in the prayer for grant of *ad interim injunction*. It was also averred that the



nature of the suit would be altered. Dismissal of the application was prayed for.

5. By way of the impugned order, the application for amendment was dismissed, leading to the filing of the instant revision petition.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner submits that the trial Court has gravely erred in dismissing the application for amendment. He submits that the suit for recovery was not barred by limitation as it would be governed by Article 62 of the Limitation Act, 1963 (hereinafter referred to as the '**Limitation Act**'). He further submits that the nature of the suit would not be changed, for the suit for injunction had been filed pursuant to execution of the mortgage deed, the execution of which had been denied by the respondent-defendant, and since the mortgage period had expired, the suit for recovery was filed. He submits that had the petitioner/plaintiff not filed the application for amendment, an objection under Order 2 Rule 2 CPC would have been raised on filing of a fresh suit.

8. Per contra, learned counsel for the respondent/defendant submits that there is no illegality in the impugned order. As regards limitation, he fairly concedes that the matter would be governed by Article 62 of the Limitation Act and the suit for recovery would not be barred by limitation. However, he submits that the nature of the suit would change and, therefore, the amendment was rightly declined.

9. I have considered the submissions made by learned counsel for the parties.



10. As regards amendment of pleadings, in *Revajeetu Builders & Developers versus Narayanaswamy & Sons & Others 2009 (10) SCC 84*, the Supreme Court of India examined the entire law starting from the decision of the privy council in *Ma Shwe Mya v. Maung Mo Hnaung, AIR 1922 Privy Council 249* wherein it was observed as under:-

"All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit."

10.1 A perusal of the aforesaid observations of the privy council as far back as in 1922 would show that it is the same law which is holding the field even today. It is not in doubt that powers of amendment should be exercised liberally but by means of the amendment, the nature and subject matter should not change. The Supreme Court then examined various judgments rendered by the English Courts, the Supreme Court, the Bombay High Court etc. and certain principles were culled out which ought to be taken into consideration while allowing or rejecting an application for amendment:

"On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:



- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?*
- (2) Whether the application for amendment is bona fide or mala fide?*
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?*

And

- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”*

10.2 The said view of the Supreme Court of India has recently been reiterated in the case of *Basavaraj versus Indira And Others 2024 (4) RCR (Civil) 115* also. Reference can also be made to the judgment of the Supreme Court of India in *Life Insurance Corporation of India versus Sanjeev Builders Private Limited & Anr. 2022 AIR (Supreme Court) 4256* wherein also, the law as regards amendment of pleadings was summed up:

“(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.



(ii) 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.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) 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 and

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

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal



especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable



prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897).”

11. The specific case of the petitioner/plaintiff is that mortgage deed dated 20.09.2018 had been executed by the respondent/defendant in his favour for a period of two years for a consideration of Rs.5,00,000/-, which was duly paid to the respondent/defendant and possession of the suit land was handed over to the petitioner/plaintiff. He submits that after the expiry of the mortgage period, the petitioner/plaintiff intends to give back possession of the suit land to the respondent/defendant and sought refund of the sum of Rs.5,00,000/-, which the respondent/defendant was not acceding to.

12. In the considered opinion of this Court, the only option with the petitioner/plaintiff, under the given circumstances, would be to amend the suit and seek recovery. As regards limitation, the trial Court gave a finding that the suit would be barred by limitation without discussing the circumstances under which it would be barred.

13. Be that as it may, the suit for recovery would be governed by Article 62 of the Limitation Act, which provides a period of 12 years and, therefore, the suit would not be barred by limitation.



14. As regards the question of change of nature of the suit, it has to be borne in mind that the suit for permanent injunction was filed by the petitioner/plaintiff and during the pendency of the same, the period of mortgage came to an end. The onus to prove the execution of the mortgage deed would, of course, remain on the petitioner/plaintiff. By no stretch of imagination, can it be said that permitting the amendment would change the nature of the suit. In the considered opinion of this Court, the trial Court did not examine the matter from the correct perspective and erroneously rejected the application for amendment of the plaint, especially since the suit was at the preliminary stage. Though issues have been framed, the suit is still at the stage of evidence of the petitioner/plaintiff.

15. Keeping in view the principles culled out by the Hon'ble Supreme Court of India in the cases of *Revajeetu Builders & Developers* (*supra*) and *Sanjeev Builders Private Limited & Anr.* (*supra*), and the facts of the present case, this Court is of the considered opinion that the impugned order is not sustainable.

16. That being so, the present revision petition is allowed. Order dated 30.08.2024, passed by the Civil Judge (Jr. Divn.), Assandh, is set aside and the application for amendment stands allowed.

17. Pending application(s), if any, also stands disposed of.

(Vikram Aggarwal)
Judge

September 22, 2025

Rajan

Whether speaking / reasoned:

Yes/No

Whether Reportable:

Yes/No