

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

Reserved on: 12.12.2022

Pronounced on: 16.12.2022

OWP No.1353/2011

ABDUL AZIZ BHAT

... PETITIONER(S)

*Through: - Mr. Rizwan-ul-Zaman Bhat, Advocate.*

V/s

MOHAMMAD IQBAL BHAT AND ORS. ...RESPONDENT(S)

*Through: - Mr. Mubashir Gattoo, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged order dated 16.08.2011 passed by learned Munsiff, Shopian, whereby application filed by him seeking amendment of the plaint has been dismissed.

2) It appears that the petitioner/plaintiff has filed a suit against respondents No.1 to 7 seeking a decree of declaration, declaring the adoption deed dated 28.04.2006 executed by deceased Salam Bhat in favour of defendant No.1-Mohammad Iqbal, as null and void, ineffective, inoperative and fraudulent so far as rights of the plaintiff are concerned. A further decree of declaration declaring that the plaintiff is owner in possession of one half of the land left behind by deceased Salam Bhat falling under Khasra Nos.8, 27, 33, 157, 143, 176, 224, 234, 319/2333,

350/233, 293 and 196 in Village Tachloo Shopian, and that the defendants are owners in possession to the extent of one half of the share, has been sought. A decree for partition of the suit property in two equal shares has also been sought.

3) The case set up by the plaintiff in his plaint is that Salam Bhat, his cousin brother and co-owner, passed away and that he had died unmarried and issueless. It has been submitted in the plaint that deceased Salam Bhat was the owner of the suit land which he had inherited from his father being his only son. It is averred in the plaint that the plaintiff entered into peaceful possession of the suit property to the extent of share of the deceased and made improvements in it. The plaintiff has gone on to aver in the plaint that, being governed by Muslim Personal Law, he as well as the defendants are entitled to inherit one half share each from the landed property left behind by the deceased, which is required to be partitioned into two equal shares, out of which one half would go to the plaintiff and another half would go to the defendants. It is further averred that the defendants have managed an adoption deed dated 28.04.2006, whereunder it is claimed that deceased Salam Bhat has adopted defendant No.1- Mohammad Iqbal. It has been contended that the said adoption deed is a nullity and is not sustainable in the eyes of law. It is further averred in the plaint that on the basis of said adoption deed, mutation in respect of the property left behind by deceased Salam Bhat stands attested in favour of defendant No.1, which is under challenge by way of separate proceedings. It has been submitted that the plaintiff has repeatedly asked defendant

No.1 to treat the impugned adoption deed as null and void and to come forward for partition of the suit property but he has refused to do so.

4) It seems that during the pendency of the suit, the petitioner filed an application seeking amendment of the plaint. By way of proposed amendment, the plaintiff claims himself to be the exclusive owner in possession of the landed property left behind by deceased Salam Bhat and he has sought substitution of the relief of partition with the relief of possession against the defendants with a permanent injunction restraining the defendants from changing the nature of one half of the suit land, which is in their possession. It has been claimed by way of proposed amendment that the plaintiff is entitled to inherit whole of the suit property left behind by the deceased in terms of Muslim Personal Law. In the para relating to cause of action, the plaintiff has sought amendment by deleting the existing para and incorporating in its place the plea that when possession of one half of the suit land was sought by the plaintiff from the defendants, they avoided to do so and ultimately refused to part with the possession of one half of the suit land in favour of the plaintiff.

5) The application was contested by the defendants and the learned trial court, after hearing the parties, passed the impugned order whereby application of the plaintiff was dismissed on the ground that the amendment sought by the plaintiff is not necessary for adjudication of the matter pending before the court. It has also been observed by the trial court that in case the amendment is allowed, it would cause an irreparable loss to the defendants.

6) The petitioner has challenged the impugned order on the grounds that the amendment sought is necessary for determining the real controversy between the parties. It is further contended that for the purpose of advancing the cause of justice, the amendment sought by the plaintiff should have been allowed.

7) I have heard learned counsel for the parties and perused the material on record.

8) Before dealing with the controversy at hand, it would be necessary to notice the law relating to amendment of the pleadings.

9) Order 6 Rule 17 of the Code of Civil Procedure, which is relevant to the context, reads as under:

*“Amendment of pleadings.—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.”*

10) From a perusal of the aforesaid provision, it is clear that the pleadings can be amended at any stage of the proceedings in such manner and on such terms and in such matters, as may be just. However, if the amendments sought are necessary for determining the real controversy, the same have to be allowed.

11) The Supreme Court has, in the case of **Revajeetu Builders and Developers vs. Narayanaswamy and Sons and others**, (2009) 10 SCC 84, after discussing the case law on the subject, summed up the factors that are to be taken into consideration while dealing with the applications for

amendments. Paras 63 and 64 of the judgment are relevant to the context and the same are reproduced as under:

*63. 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.*

*These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.*

*64. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.*

**12) In B. K. Narayana Pillai vs. Parameswaran Pillai and another,**

**(2002) 1 SCC 712, the Supreme Court has observed as under:**

*“The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea*

*in defence which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original I's was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be avowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating s legal right accruing to the opposite part on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement ".*

13) From the aforesaid enunciation of law on the subject, it is clear that the Court has to be liberal in allowing the prayer for amendment of pleadings. However, when it comes to the amendment of the plaint, there is a slight difference in the sense that while allowing amendment of a written statement, general principle is that the amendment should be allowed even if it amounts to addition of new grounds of defence, substituting or altering a defence or taking inconsistent pleas in the written statement, the same principle cannot be applied while considering an application for amendment of a plaint as the same stands on a different footing. Adding, altering or substituting a new cause of action in the plaint is certainly objectionable.

14) In the light of aforesaid principles, let us now consider the facts of the instant case. In the original plaint, the plaintiff claims that he is

owner in possession of one half of the property left behind by his uncle, deceased Salam Bhat, whereas other half is owned and possessed by the defendants who also happen to be the successors-in-interest of other cousin brother of Salam Bhat. In the original plaint, it is claimed by the plaintiff that the deed of adoption in favour of defendant No.1 is null and void and, as such, the property of deceased Salam Bhat has to devolve upon his heirs as per Muslim Personal Law. However, by way of proposed amendment, the plaintiff claims that in the absence of deed of adoption, he would be the lone legal heir entitled to ownership and possession of the property left behind of deceased Salam Bhat, which is clearly in contradiction to his claim made in the original plaint.

15) Apart from the above, in the original plaint, the plaintiff claims a decree of partition in respect of the suit property against the defendants whereas by way of proposed amendment, he has sought substitution of relief of partition by a decree of possession of whole of the property left behind by deceased Salam Bhat. Thus, the plaintiff seeks to change the very nature of the suit. Even the cause of action is sought to be changed by the plaintiff by amending the para of the plaint which relates to the cause of action. In the original suit, the plaintiff has claimed that he had sought partition of the property from defendant No.1 and when he refused, he filed the suit but by way of proposed amendment, the plaintiff has pleaded that he had sought possession of the property from defendant No.1 which he refused.

16) Inconsistent pleas can be taken and even subsequent events can be allowed to be incorporated by way of amendment but not when the total cause of action is going to be changed. There is no doubt that liberal approach has to be adopted while considering an application for amendment of the pleadings in order to avoid multiplicity of litigation but it does not mean that the plaintiff should be permitted to set up a total new cause of action or incorporate new pleas which are inconsistent with the pleadings of the original plaint.

17) The amendment sought by the plaintiff by way of application which he had filed before the learned trial court, if allowed would have amounted to not only the change of cause of action but also to change of nature of the suit. Therefore, the same did not deserve to be allowed and the learned trial court has rightly rejected the same. The impugned order passed by the learned trial court, therefore, does not call for any interference by this Court. The petition lacks merit and is dismissed accordingly.

(Sanjay Dhar)  
Judge

Srinagar  
16.12.2022  
"Bhat Altaf, PS"

<i>Whether the order is speaking:</i>	<i>Yes/No</i>
<i>Whether the order is reportable:</i>	<i>Yes/No</i>