

(2025) 09 OHC CK 1035

In the Orissa High Court

Case No : Civil Miscellaneous Petition No. 1115 Of 2025

Gouri Dwibedy And Others

APPELLANT

Vs

Nagendra Kumari Acharya@ Dwibedy And Others

RESPONDENT

Date of Decision : 18-09-2025

Acts Referred:

Code Of Civil Procedure, 1908 — Order 2 Rule 2, Order 6 Rule 17
Code Of Civil Procedure (Amendment) Act, 2002 — Section 16(2)

Citation : (2025) 09 OHC CK 1035

Hon'ble Judges : B.P. Routray, J

Bench : Single Bench

Advocate : S.S. Deo, P. Dash, P.K. Satapathy

Final Decision : Dismissed

Judgement

B.P. Routray, J

1. Heard Ms. S.S. Deo, learned Advocate for the Petitioners, Mr. P. Dash, learned Advocate for the Opposite Party No.2 and Mr. P.K. Satapathy, learned Advocate for Opposite Parties 3, 4, 5(a) to 5(g).

2. Present C.M.P. is directed against the order dated 15.07.2025 of the learned Addl. Civil Judge (Sr. Divn.), Talcher passed in T.S. No.58 of 2002, wherein the prayer of the Plaintiffs to amend the pleadings has been rejected.

3. Present Petitioners being the Plaintiffs filed T.S. No.58 of 2002 on 13th June 2002. During the year 2008, they amended the plaint with the prayer as follows:-

"19. That the Plaintiffs, therefore, pray that

(a) Plaintiffs' title in respect of the Schedule-A properties be declared as they have acquired exclusive title over the same on the basis of partition held in the year 1964.

(b) Let it be further declared that the Defendant No.1 and 2 had no legal right of

executing registered sale deeds in favour of Paramananda Sahu. Pratap Kumar Behera and Suvendu Pradhan bearing Registered sale deeds No.231 dt.10.5.2005. sale deed No.252 dated 20.5.2005.and sale deed No. 1718 dt.20.4,2006 respectively covering the schedule-A lands and the Defendant No.1 and. 2 be permanently enjoined from alienating any property from Schedule-A lands.

(c) the cost of the suit may be decreed against the defendants.

(d) any other appropriate relief be granted to the Plaintiffs to which they may be found entitled."

4. The suit was proceeded and the parties adduced their respective evidences. It is now posted for argument. While the matter stood thus, the Plaintiffs seek for amendment to the plaint and the schedule of amendment includes following in the prayer portion.

"19 (b). Alternatively Let the suit schedule properties be partitioned among the parties thereby allotting the 'A' Schedule land to the plaintiffs, the 'B' schedule land be allotted in favour of defendant No. 3,4 & 5a to 5g and the 'C' Schedule land be allotted to the defendant No.1 and 2."

5. Besides the above, the Plaintiffs also seek to add more properties in the 'C' schedule of properties.

6. The prayer of the Plaintiffs for amendment was rejected by learned trial court on the ground that the Plaintiffs do not show due diligence on their part to bring such amendments earlier and secondly, the proposed amendment if would be allowed, will change the nature and character of the suit leading to de novo trial of the same.

7. Ms. S.S. Deo, learned counsel for the Petitioners submits that the suit having been filed prior to 1.7.2002, when the amended provision of Rule 17 under Order 6, C.P.C. came into force, such amended provision would not be a bar on the way of the Plaintiffs to justify due diligence on their part for getting amendment of the pleadings by operation of Section 16(2) of 2002 Amendment Act. She further contends that the observation of the trial court that the proposed amendment would change the nature and character of the suit leading to de novo trial is completely mis-conceived for the reason that the Plaintiffs though want to add the prayer for partition, but they did not bring any fresh cause of action to be incorporated in the plaint and their case would stand entirely on their legs based on the existing pleadings in the plaint. It is also submitted that the pleadings at paragraph 9, 10 & 13 of the plaint justify making the prayer on behalf of the Plaintiffs with regard to partition of the suit property since the Defendants have denied the fact of partition in their written statement. According to her, such amendment on the part of the Plaintiffs is very much necessary for proper adjudication of the dispute.

8. On the other hand, Mr. P. Dash as well as Mr. P.K. Satapathy, learned counsels

for the respective opposite parties, who are the Defendants before learned trial court, submits jointly that, the subsequent prayer for partition sought to be incorporated by the Plaintiffs by way of present amendment was earlier in the plaint before the Plaintiffs effected their amendment in the year 2008. According to them, the deletion of paragraph 7 in the original plaint with substitution of the new paragraph would completely take away the earlier admission of the Plaintiffs with regard to previous partition effected in the year 1964 and thereby bringing a new case for the parties and for said purpose the entire evidence has to be led afresh. It is thus submitted by the Opposite Parties that the learned trial court has rightly refused to incorporate the amendments which would lead to de novo trial of the suit.

9. As stated above, the prayer of the Plaintiffs is with regard to declaration of right, title and interest in respect of the suit schedule properties along with the prayer for permanent injunction and other consequential reliefs. It is not disputed at the bar that present prayer made in the plaint was by way of amendment made in the year 2008 and thereby the earlier prayer for partition made in the plaint initially was substituted. This amendment though applied in the year 2008 was effected on the plaint on 7.10.2016 by the order of the court. So far as the schedule of properties concerned, the Plaintiffs now want to add additional properties in the suit schedule to effectively adjudicate their prayer for partition in respect of such suit properties. In other words, the Plaintiffs want to bring all such properties of the family into the fray to succeed in the prayer for partition, whereas the earlier prayer for declaration and permanent injunction was in respect of limited properties. In respect of the question raised on the conduct of the Plaintiffs that they do not discharge due diligence in bringing such amendment to the plaint to which Ms. Deo, learned counsel for the Petitioners answers that the rigor of 'due diligence' under the proviso to Section 17 of Order 6, C.P.C. would not apply to the present case, is supported by the decision of the Hon'ble Supreme Court in the case of State Bank of Hyderabad vs. Town Municipal Council, (2007) 1 SCC 765. It needs to be mentioned here that prior to 2002 amendment of the C.P.C. of Order 6 rule 17, the provision was read as follows:-

"5. Order 6 Rule 17 of the Code reads thus:

"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. When the date of filing of the suit is never disputed to be prior to 1.7.2002, it is held by the Hon'ble Supreme Court as follows:-

"11. It is one thing to say that the application for amendment suffers from delay or laches but it is another thing to say that thereby the defendant was prejudiced. It is also not a case of the respondent that by reason of such an

amendment, the relief which could not be granted having regard to the law of limitation has become available. The court even in such a case is not powerless although the question as to whether the relief sought for would be otherwise barred by limitation is a relevant factor to determine the issue.

12. This aspect of the matter has been considered by this Court in *L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.* [(1957) SCR 438] in the following terms: (AIR p. 362, para 16)

"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."

13. *L.J. Leach and Co. Ltd.* (supra) was referred to in *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* [(1957) SCR 595] holding:

"We think that the correct principles were enunciated by Batchelor, J. in his judgment in the same case viz. *Kisandas Rupchand case* [*Kisandas Rupchand v. Rachappa Vithoba Shilwant*, ILR (1909) 33 Bom 644 : 11 Bom LR 1042], when he said at pp. 649-50:

'All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. ... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same: can the amendment be allowed without injustice to the other side, or can it not?'

Batchelor, J. made these observations in a case where the claim was for dissolution of partnership and accounts, the plaintiffs alleging that in pursuance of a partnership agreement they had delivered Rs 4001 worth of cloth to the defendants. The Subordinate Judge found that the plaintiffs did deliver the cloth, but came to the conclusion that no partnership was created. At the appellate stage, the plaintiffs abandoned the plea of partnership and prayed for leave to amend by adding a prayer for the recovery of Rs 4001. At that date the claim for the money was barred by limitation. It was held that the amendment was rightly

allowed, as the claim was not a new claim."

(See also *Rajesh Kumar Aggarwal v. K.K. Modi* [(2006) 4 SCC 385] , *Pankaja v. Yellappa* [(2004) 6 SCC 415] , *Baldev Singh v. Manohar Singh* [(2006) 6 SCC 498 : JT (2006) 7 SC 139] , *Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar* [(1990) 1 SCC 166] and *A.K. Gupta and Sons v. Damodar Valley Corpn.* [(1966) 1 SCR 796 : AIR 1967 SC 96])"

11. In the given facts of the case at hand, as the plaint was filed on 13th June 2002, undisputedly the principles as set out in *State Bank of Hyderabad* (supra) applies squarely to the present case and therefore, the ground as stated by the trial court that the Plaintiffs did not discharge due diligence in brining the amendment earlier will not stand as a bar to refuse the prayer for amendment.

12. The next ground stated by the learned trial court is with regard to change of nature and character of the suit that would lead to de novo trial of the suit. It is seen that the prayer for partition as sought to be incorporated by way of present amendment was not earlier in the plaint and instead the Plaintiffs have prayed for declaration of right, title and interest along with permanent injunction against the Defendants. A combined reading of the plaint assertions made at paragraph 7, 9, 10 & 13 gives light on the Plaintiffs' case that though partition was effected between the parties, but the same could not be finally implemented due to non-coopertaion on the part of the Defendants. Nevertheless, the Plaintiffs did not choose to pray for partition at the initial stage, but they seek it to incorporate in the prayer portion along with other parts of amendment after 23 years of filing of the suit. However, the question now comes to examine whether such prayer if allowed in favour of the Plaintiffs would change the nature and character of the suit ?

13. Law is well settled that any such pleadings which would change the nature and character of the suit would be disallowed. It is held by the Hon'ble Supreme Court in *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another*, (2022) 16 SCC 1 as follows:-

"71. Our final conclusions may be summed up thus:

71.1. Order 2 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 2 Rule 2 CPC is, thus, misconceived and hence negated.

71.2. 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 6 Rule 17 of the CPC.

71.3. The prayer for amendment is to be allowed:

71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2. 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 do 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).

71.4. A prayer for amendment is generally required to be allowed unless:

71.4.1. 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.

71.4.2. The amendment changes the nature of the suit.

71.4.3. The prayer for amendment is mala fide, or

71.4.4. By the amendment, the other side loses a valid defence.

71.5. 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.

71.6. 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.

71.7. 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.

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

71.9. 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.

71.10. 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.

71.11. 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* [Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897].)"

14. It is stated in the afore-cited case that when the amendment sought for changes the nature and character of the suit to set up a new case, such amendment would not be permitted to be incorporated. Here it is stated on behalf of the Plaintiffs that, though they have prayed for incorporation of the prayer for partition in the suit, but they never pray for change the cause of action or addition of the same in the plaint and therefore, the Plaintiffs if can built their case for partition on the pleadings existing on the plaint, there would be no harm in bringing such prayer in the suit.

15. As seen from the copy of the plaint and copy of the petition for amendment under Annexure-1 & 2 respectively, the prayer for partition in addition to the prayer of the Plaintiffs for their declaration of right, title and interest over the suit property would definitely amount to bring a new case for the Plaintiffs regarding partition of the entire properties of the joint family by way of addition to the suit schedule properties. Therefore, what is submitted on behalf of the Plaintiffs that they do not want to change the cause of action of the suit would be irrelevant for the purpose that if the prayer for amendment would be allowed in their favour they would bound to drag the cause of action from 1964 till 2025. The pleading made in paragraph 9 that there was an earlier partition effected by way of 'Gula' in 1964 would be considered irrelevant for the purpose once the prayer for partition would come to be adjudicate in the plaint. It is needless to say, of course, that once a prayer is allowed to be incorporated for partition of the entire ancestral property, then the right will accrue in favour of the Plaintiffs to bring evidence in favour of their assertions and thereby it would amount to try the suit from the beginning as parties require to adduce their evidence in such respect. Therefore, the observation of the learned trial court that the prayer for partition of the suit if allowed would change the nature and character of the suit leading to de novo trial of the same may not be a misnomer, but would come to be a true fact. As such, this Court agrees with the finding of the learned trial court that the prayer for amendment cannot be allowed.

16. In the result, the impugned order is confirmed and the CMP is dismissed.