

(2012) 04 GAU CK 0025
In the Gauhati High Court
Case No : CRP No. 15 of 2012

Shri Anowar Ali and Smti. Joydhan Bibi	APPELLANT
Vs	
Smt. Jola Bibi and Others	RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 131, 227
Supreme Court Rules, 1966 — Rule 8

Citation : (2012) 2 GLD 667 : (2012) 2 GLT 985

Hon'ble Judges : Subhasis Talapatra, J

Bench : Single Bench

Judgement

S. Talapatra

1. Heard Mr. G.S. Bhattacharjee, Learned Counsel appearing for the petitioners as well as Mr. S. Deb, learned senior counsel for the respondents. By this application filed under Article 227 of the Constitution of India, the legality of the order dated 07.01.2012 as passed by the learned Civil Judge, Junior Division, Udaipur, South Tripura, in Civil Misc. No. 04/2011 in Title Suit No. 04/2010 has been questioned.

2. The brief fact sans unnecessary details which is required to be noticed is encapsulated for the purpose of appreciation.

The petitioners filed the suit being Title Suit No. 04/2010 for declaration that the plaintiffs are the joint owners and possessors of the suit land, declaration that the plaintiffs have joint right, title, interest over the suit land, a decree of permanent injunction against the defendants from disturbing the peaceful possession of the plaintiffs and decree for damage by way of cost etc.

3. The respondent Nos. 2 and 4 filed the joint written statement traversing the pleadings in the plaint and they denied the right, title, interest of the plaintiffs, petitioners herein over the suit land. The learned Civil Judge, Junior Division,

South Tripura, Udaipur, on examination of the pleadings, framed issues and thus the trial of the suit commenced. Thereafter, the suit was fixed for recording evidence when the plaintiffs filed a petition under Order 6 Rule 17 of the CPC for amendment of the plaint and that petition was registered as Civil Misc. No. 04/2011 in Title Suit No. 04/2010.

4. By the petition, the amendment as sought has been described in the schedule of amendment, which is excerpted for appreciation hereinbelow :

(a) In the cause title the "Declaration" word may be inserted after the words "suit for

(b) In the prayer portion before prayer (a) the following prayer may be inserted as (a1) Decree for a declaration, that the alleged sale deeds executed on 12/3/1999 are void and be cancelled. The plaintiffs are the rightful owner of the suit land.

5. Before proceeding further, it is to be noted that in the Cause Title, already suit for declaration is appearing. Therefore, the said prayer for amendment does not require any consideration. Apart that, in the proposed amendment at schedule (b) the prayer that the plaintiffs are the rightful owner of the suit land are also appearing in the prayer of the suit. As such the said prayer is not required to be incorporated further by way of amendment. Those proposed amendments as indicated are indices of casual approach of the plaintiffs. After amendment of the Order 6 Rule 17 of the Code of Civil Procedure, 1908 (the "Code" thereafter in short) in 2002, the said provision has been re-framed in the following manner :

17. 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:

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.

6. The earlier provision has been substituted by the present one making the same more onerous as the proviso to the said Rule 17 in unambiguous terms provides that no application for amendment shall be allowed after the trial 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. Therefore, for the purpose of amending the plaint or the written statement after the trial commenced, the party who seeks for such amendment is under obligation to demonstrate that despite due diligence exercised he could not have raised the matter before the commencement of the trial. After a cursory glance in the said petition for amendment, any such pleadings to demonstrate

the due diligence except what has been stated in para-6 of the said petition is found. In the said paragraph, the petitioners have stated "..... after disclosure of the stands of the Defendants in the W.S., and in the stated consequence the amendment would not substantially change the mode of the suit. Hence in the stated premises it is prayed that your honour would be kind enough to allow the instant amendment petition for the ends of justice". Prior to that, however, in para-4, the petitioners have stated "the plaintiffs are the allottees on the suit land and without permission no sale deed can be executed by the plaintiffs and the plaintiffs never prayed for permission for sale of their suit land and they also never executed any sale deed in favour of the defendants or anybody else. Hence the sale deeds as mentioned by the defendants are fraudulent and if any produced before the learned court are false and may be executed by impersonation practising fraud".

Indisputably, there is no pleading in the petition for amendment for demonstrating the due diligence.

7. Now, let us examine that whether the fact of execution of the sale deeds as referred in the petition was known to the plaintiffs or not. For that purpose, paragraphs 3 and 4 of the plaint are required to be excerpted.

3. That, all on a sudden on 05/02/2010 the Police personnel from Kakraban Police Station approached to the plaintiff's residence and they inquired the documents relating to the suit land such as the allotment order, the khatian etc. and after observing all the papers the plaintiff No. 1 was called at Kakraban P.S. at about 02.00 P.M. When the plaintiff No. 2 reached at the P.S. the Officer in charge of the P.S. informed the plaintiff No. 1 that a complaint has been lodged by one Jakir Hossain, S/O Ali Akbar of village Amtali, Kakraban, against the plaintiff No. 1 as he is restraining the Jakir Hossain to enter in his purchased land which he purchased from the plaintiff No. 1 in the year 1999. Hearing this the plaintiff denied any sale of land to Jakir Hossain or any body else and also demonstrated that the land in question is allotment land and the same can not be sold without prior permission of the DM & Collector and as such the plaintiff's never took permission from the Collector and never sold the land or any part thereof. The plaintiff No. 1 showed the police personnel the original allotment order and the khatian No. 1147 which clearly exhibited the order on the stated allotment khatian that "Without the permission of the Collector the land can not be sold". Hence the claim of the said Jakir Hossain about the purchase of the land or any part thereof is totally false, concocted and baseless.

4. That, after appreciation of all documents on 05/02/2010 the police personnel showed the plaintiff No. 1 a Xerox copy of the registered sale deed executed by the plaintiff No. 2, where the plaintiff No. 2 executed the sale deed by putting her thumb impression. In the contrary the plaintiff No. 1 stated that the plaintiff No. 2 used to signature in the papers she never put her thumb impression on any papers. After observing the same sale deed it was revealed by the plaintiff No. 1 that the said deed is a conclusive proof of the fraud and forgery committed

by the said Jakir Hossain i.e. the defendant No. 4. After the said observation the plaintiff No. 1 asked the police officer to endorse the cause before the appropriate court of law for the proper ends of justice. But the police officer declined to do so and pressed the plaintiff No. 1 to settle the matter with the said Jakir Hossain which the plaintiff vehemently denied and informed the all facts to the local Panchayat and other elderly Mohammadan people in the locality.

8. It is apparent from those paragraphs that execution of the sale deeds was known to the plaintiffs prior to institution of the suit and they had been shown a photocopy of the said sale deeds by the police at Kakraban Police Station. In para-4, the plaintiffs, the petitioners herein, pleaded that the sale deed is a conclusive proof of the fraud and forgery committed by one Jakir Hossain i.e. the defendant No. 4. As such, there was no new discovery of facts or there is no discovery which was not known to the plaintiffs before the trial commenced. However, Mr. G.S. Bhattacharjee, Learned Counsel for the petitioners pointedly argued that no amendment of the pleading has been sought by the said petition. The amendment that has been fundamentally sought is in the prayer which would not change the nature and character of the suit. On the contrary, if the said amendment is not allowed to be carried out, the real controversy involved in the suit cannot be adjudicated fairly. In support of his contention, Mr. Bhattacharjee has relied few decisions.

9. In *Surender Kumar Sharma Vs. Makhan Singh*, , the Apex Court held

It is also well settled that even if the amendment prayed for is belated, while considering such belated amendment, the court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by costs or otherwise. Accordingly, we do not find any reason to hold that only because there was some delay in filing the application for amendment of the plaint, such prayer for amendment cannot be allowed.

The Apex Court laid down similar principle in *B.K.N. Narayana Pillai Vs. P. Pillai and Another*, .

10. In *North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by Lrs.*, , the Apex Court in para 16 laid down the following principles:

16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, , which still holds the field, it was held that 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. Amendments 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.

The similar principle was laid down in *Gajanan Jaikishan Joshi Vs. Prabhakar Mohanlal Kalwar*, . But consideration in these cases was made on provisions of Order 6 Rule 17 as stood prior to the amendment.

11. Mr. Bhattacharjee also referred a decision to contend that even if the due diligence could not be satisfactorily established, then also amendment can be allowed by the court. He relied on *Chander Kanta Bansal Vs. Rajinder Singh Anand*, . In para 13 of the said decision, it has been enunciated as under :

13. The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the other's case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.

12. On the other hand, Mr. S. Deb, learned senior counsel appearing for the respondents emphatically submitted that the proviso to Rule 17 of CPC cannot be understated unless the requirements of the proviso are satisfied. He, with sufficient vehemence submits that the court should not dilute the amendment that has been carried out in 2002 for the purpose of eradicating the laches and delay in the trial. In support of his contention, the learned senior counsel placed reliance in *Manoj Sharma Vs. State and Others*, , where the Apex Court at para 43 held :

43. Under the proviso no application for amendment shall be allowed after the trial has commenced, unless in spite of due diligence, the matter could not be raised before the commencement of trial. It is submitted, that after the trial of the case has commenced, no application of pleading shall be allowed unless the above requirement is satisfied. The amended Order 6 Rule 17 was due to the recommendation of the Law Commission since Order (sic Rule) 17, as it existed prior to the amendment, was invoked by parties interested in delaying the trial. That to shorten the litigation and sped up disposal of suits, amendment was made by the amending Act, 1999, deleting Rule 17 from the Code. This evoked much controversy/hesitation all over the country and also leading to boycott of courts and, therefore, by the CPC (Amendment) Act, 2002, provision has been restored by recognising the power of the court to grant amendment, however, with certain limitation which is contained in the new proviso added to the rule. The details furnished below will go to show as to how the facts of the present case show that the matters which are sought to be raised by way of amendment by the appellants were well within their knowledge on their court case, and

manifests the absence of due diligence on the part of the appellants disentitling them to relief.

In the said decision, the Apex Court has further sounded that any Section should not interpreted in a manner that part of it becomes otiose and meaningless and very often a proviso itself is read as a substantive provision it has to be given full effect.

13. Mr. Deb further relied Vidyabai and Others Vs. Padmalatha and Another, . In paras 19 and 20, the Apex Court held :

It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.

20. In Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), , this Court has upheld the validity of the said proviso. In any event, the constitutionality of the said provision is not in question before us nor we in this appeal are required to go into the said question. Furthermore, the judgment of the High Court does not satisfy the test of judicial review. It has not been found that the learned trial Judge exceeded its jurisdiction in passing the order impugned before it. It has also not been found that any error of law has been committed by it. The High Court did not deal with the contentions raised before it. It has not applied its mind on the jurisdictional issue. The impugned judgment, therefore, cannot be sustained, which is set aside accordingly.

14. Since Mr. G.S. Bhattacharjee, Learned Counsel for the petitioners did not dispute the contention of Mr. S. Deb, learned senior counsel for the respondents that the petition for amendment was pressed after the trial commenced, the decisions as Mr. Deb relied to show that the trial begins with the issues are framed, are not discussed by this Court.

Mr. Deb relied the following decisions to show when the trial begins :

(1) State of Madhya Pradesh vs. Union of India & Anr., as reported in (2011) 12 SCC 268;

(2) Manoj Sharma Vs. State and Others, ;

(3) Om Prakash Khakholia & Ors. Vs. Md. Rafiuddin Ahmed @ Rickbaba as reported in (2010) 3 GLR 906;

(4) Kailash Vs. Nanhku and Others, and

(5) Vidyabai and Others Vs. Padmalatha and Another, .

15. Mr. S. Deb, learned senior counsel also relied Chander Kanta Bansal(supra) to buttress his submission regarding the meaning and purport of diligence and due diligence. The Apex Court at Para 16 in Chander Kanta Bansal(supra) held :

The words "due diligence" have not been defined in the Code. According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn.), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means diligence as a prudent man would exercise in the conduct of his own affairs.

Thereafter, Mr. Deb contended that there is no pleading or statement as to the due diligence in the entire petition and as such there is no error apparent or failure of jurisdiction while the learned Civil Judge passed the impugned order dated 07.01.2012, dismissing the petition for amendment.

16. The impugned order dated 07.01.2012 assigned the reasons for rejection in the manner as under :

(i) Proviso to Order 6 Rule 17 confers jurisdiction on the court while it is demonstrated that in spite of due diligence the party could not have raised the matter before commencement of the trial and in the case in hand, the plaintiffs could not show such due diligence why they could not raise the matter before framing of the issue;

(ii) Prayer for cancellation of the sale deed is totally a separate issue which is not related to the final determination of the suit and according to that court, that may change the nature of the suit completely and there is a greater scope for the defendants to be prejudiced by such amendment.

17. this Court, in Om Prakash Khakholia(supra) held that when the amendment in the written statement was not carried out despite knowledge, the denial of the amendment after the commencement of hearing of the suit and failure to show that despite due diligence, the defendants could not have applied for the amendments, the learned trial court was wholly justified in not acceding to the defendants' prayer for allowing them to make amendment in their written statements.

This decision has been relied on by Mr. Deb, learned senior counsel for the respondents to hold that in the case in hand the fact related to execution of the sale deeds were known to the plaintiffs much prior to institution of the suit. Despite that they have refrained from making appropriate pleadings and prayer

in the suit and as such the learned trial court was wholly justified by not acceding to that prayer and no interference is warranted in exercise of jurisdiction as conferred upon this Court under Article 227 of the Constitution of India.

18. this Court, is however conscious of the decision of the Apex Court as rendered in State of Madhya Pradesh vs. Union of India & Anr.(supra), where the Apex Court held :

6. In order to consider the claim of the plaintiff and the opposition of the defendants, it is desirable to refer the relevant provisions. Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short "the Code") enables the parties to make amendment of the plaint which reads as under :

17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleading 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. The above provision deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it must be shown that in spite of due diligence, such amendment could not have been sought earlier.

8. The purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.

9. Inasmuch as the plaintiff State of Madhya Pradesh has approached this Court invoking the original jurisdiction under Article 131 of the Constitution of India, the Rules framed by this Court i.e. the Supreme Court Rules, 1966 (in short "the Rules") have to be applied to the case on hand. Order 26 speaks about "pleadings generally". Among various Rules, we are concerned about Rule 8

which reads as under :

8. The Court may at any stage of the proceedings allow either party to amend his pleadings in such manner and on such terms as may be just, but only such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

The above provision, which is similar to Order 6 Rule 17 of the Code prescribes that at any stage of the proceedings, the Court may allow either party to amend his pleadings. However, it must be established that the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties.

10. this Court, while considering Order 6 Rule 17 of the Code, in several judgments has laid down the principles to be applicable in the case of amendment of plaint which are as follows :

(i) *Surender Kumar Sharma Vs. Makhan Singh*,

5. As noted herein earlier, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment.

(ii) *North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by Lrs.,* .

16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, , which still holds the field, it was held that 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. Amendments 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.

(iii) Usha Devi Vs. Rijwan Ahamd and Others, .

13. Mr. Bharuka, on the other hand, invited our attention to another decision of this Court in Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., . In para 17 of the decision, it was held and observed as follows : (SCC pp.504-05).

17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the CPC must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion on the court to allow an amendment of the written statement at any stage of the proceedings.

(iv) Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others,

15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 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.

(v) Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, .

63. On critically analysing 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 of 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 6 Rule 17. These are only illustrative and not exhaustive.

The above principles make it clear that courts have ample power to allow the application for amendment of the plaint. However, they must be satisfied that the same is required in the interest of justice and for the purpose of determination of real question in controversy between the parties.

19. This decision was rendered by the Apex Court on consideration of the proviso to Order 6 Rule 17 of the Code and as such the fundamental principle for consideration is well-etched that whether an amendment would be allowed or not should be based on whether such amendment is required for deciding the real controversy between the parties or not. Aspect of due diligence has to be juxtaposed accordingly.

20. In the present case, the learned trial court considered the prayer for amendment without proper appreciation of the attending fact. this Court finds that from the very beginning the pleadings in regard to execution of the sale deeds in question found place in the plaint and the pleadings as advanced by the plaintiffs, the petitioners herein, were controverted by the defendant Nos. 2 and 4. Surprisingly, no issue in this regard was framed by the learned trial court. The plaintiffs also failed to rise for framing such issue most callously. No doubt, there is delay/laches on the part of the plaintiffs, the petitioners herein in preferring the petition for amendment and there is no statement in respect of due diligence. But when the proposed amendments are not for amendment of the pleadings but for insertion of one relief the element of due diligence gets subsided in as much as there is no question of discovery or not raising the same before the trial commenced. this Court could have scrutinised the efficacy of their prayer that has been sought to be incorporated in the context of pleadings but that could influence the trial court and considering that aspect of the matter no analysis is attempted towards that. It is also to be noted that, for the belated attempt of the plaintiffs for incorporating the additional relief by way of amendment, the defendants have suffered and as such if this Court is inclined to allow the amendment, that is required to be done with compensatory cost.

21. After a focussed analysis of the pleadings, it appears to the court that if the amendment is rejected as a whole, the real controversy between the parties cannot be adjudicated. The pleadings as to the execution of the sale deeds in

question is inseverable part of the controversy.

22. After due consideration to the rival contentions, this Court is of the opinion that since there is no prayer for amendment of the pleadings and on the basis of the pleadings those are already available in the plaint, a new prayer has been sought to be allowed and that relief is not apparently barred by the law of limitation. Moreover, unless the said relief is incorporated, the real controversy between the parties as it appears cannot be adjudicated. As such, the proposed prayer after prayer (a) as "(a1). Decree for a declaration, that the alleged sale deeds executed on 12/3/1999 are void and be cancelled" is allowed, subject to payment of Rs. 3,000/- (rupees three thousand)only to the contesting respondents herein within a period of a fortnight from the date of this order. The petitioners are also directed to file the amended plaint within a period of fortnight from today in the trial court without fail.

23. In view of the interference to the extent as indicated above, the impugned order dated 07.01.2012 as passed in Civil Misc. No. 04/2011, in Title Suit No. 04/2010 stands quashed. This revision petition accordingly stands disposed of.