

(1982) 11 GAU CK 0007
In the Gauhati High Court
Case No : Civil Revision No. 91 of 1979

Shri Pokarmal Agarwalla

APPELLANT

Vs

Shri Madhoram Thakursidas

RESPONDENT

Date of Decision : 24-11-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115

Citation : (1983) 1 GLR 194

Hon'ble Judges : K.M. Lahiri, J

Bench : Single Bench

Advocate : A.M. Majumdar and S.M. Haque, for the Appellant; D.N. Baruah, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Lahiri, J.—This is an application u/s 115 of the CPC directed against the judgment and order dated (sic). 79 passed by the learned Munsiff, Sibsagar in Title Suit No. (sic) of 1974. The grievance of the Petitioner is that in the original plaint the suit property was described as: "House being Current Holding No. 465 of Ward No. 12 of Sibsagar Town Mouza Nagarmahal". The Plaintiff found that it was not the all description of the suit properly and, accordingly prayed (sic) amendment of the plaint and described the suit property thus:

The house standing partly on Dag No. 2646 of periodic patta No. 2140 and partly on Dag No. 2652 of short lease No. 208 of Sibsagar Town, Mouza Nagarmahal and situated in ward No. 12 of Sibsagar Municipality being a Sibsagar Municipality Holding of ward No. 12....

2. Mr. A.M. Mazaumdar, learned Advocate General, Assam, appearing for the Petitioner has candidly submitted that the Court had jurisdiction to allow the amendment of the plaint and the party had the right to pray for the same under the provisions of Order 6 Rule 17 of the Code of Civil Procedure. In the present day trial system, the trend set by the Supreme Court is to settle all differences of

the contestants in a suit. The wholesome provisions of Order 6 Rule 17 in the context of the Indian litigants have been benignantly construed and extended to meet the requirements of the litigant public. In *Ishwardas v. State of M.P.* AIR 1970 SC 551 even the Defendant was allowed to amend the written statement at the appellate stage to enable him to raise a new plea. It clearly shows that the object of Order 6 Rule 17 is to do justice and not to shut out justice merely on technicalities of the proceedings. The power to amend written statement even at the appellate stage can be allowed if the delay in taking up the (sic) is explained. Even on such amended pleadings the appellate Court has been given power to dispose of the appeal. The appellate Court cannot refuse to permit amendment of written statement to raise a vital issue or plea merely because the necessary material is not before it. The pith and substance of the decision is that the procedural law is meant to uphold the cause of justice and not to short-circuit and bring to an (sic) justice. In innumerable other cases their Lordships of (sic)supreme Court have held that the amendment should be granted generously. In *C.M. Vereekuty v. C.M. Mathukutty* 1981 SCC 537, the Supreme Court upheld the order whereby the Plaintiff was allowed to amend the plaint by "substituting a new schedule" containing fuller and correct particulars of properties. In the instant case in place of the earlier description of the suit property fuller and correct particulars of the properties were furnished and therefore the Defendant Petitioner could not have raised any objection. The court had acted well within its jurisdiction to pass the order, and this Court would be reluctant to interfere with the same in exercise of its powers u/s 115 of the Code. However, Mr. Mujumdar, learned Counsel for the Petitioner submits that in the description of the amended schedule the Holding No. was not given. Mr. Barua submits that the Plaintiff will file application to insert the Molding No. by way of amendment if the Defendants Petitioner has objection for not giving full particulars of the suit property. The suit property should be more fully described than what has been done in the instant case otherwise both the parties will be seriously prejudiced in the course of trial. Accordingly, the opposite party is allowed to further amend the schedule of the suit property. The parties have no objection to this.

3. In the result the petition is dismissed. However, there will be no order as to costs.