IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Rai Chattopadhyay

C.O. 3542 of 2025

Keshab Malakar & Anr.
Versus
Kanai Malakar & Ors.

For the Petitioners : Mr. Shibasis Chatterjee
: Mr. Sandip Kundu
: Mr. R. Bose

For the respondent Nos. 1 to 3 : Mr. Rishab Ahmed Khan
: Mr. Muskan Jalan
: Mr. Aritra Ghosh

Heard on **: 21.09.2026**

Judgment on **: 25.09.2026**

Uploaded on **: 25.09.2026**

Rai Chattopadhyay, J. :-

(1) An order of the Civil Judge (Junior Division), Additional Court, Berhampore, Murshidabad dated March 18, 2025 in Partition Suit No. 13 of 2018 is under challenge in the instant revision. The revision has been filed by the defendant Nos. 2 and 3 who are aggrieved with the said order of the Court. The Court, vide the said order dated March 18, 2025 has allowed the plaintiff's prayer for amendment of the plaint under Order VI, Rule 17 of the CPC and directed the plaintiff to file the amended plaint on the following date. The defendants/petitioners have stated that acceptance by the

Court of the belated filing of the prayer for amendment by the plaintiff/opposite parties is in contravention of the proviso to Order VI, Rule 17 of the CPC. In this regard let the provision of the statute as above be quoted as hereinbelow: -

> ***"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."*

(2) According to the defendant/petitioners, there is no satisfaction in the instant case of the Court as regards due diligence, if any, being exercised by the plaintiff at the time of filing the suit and still not having come to know the fact which he intends to incorporate by way of amendment. Mr. Shibasis Chatterjee, learned advocate for the petitioner insists that there is none. It is further submitted that the proposed amendment tends to alter the very nature and character of the suit itself. Hence, the impugned order has been challenged and prayer for setting aside of the same has been made.

(3) Mr. Chatterjee, learned advocate for the petitioner has submitted that the instant suit is a long pending one in which both the parties have filed their pleadings and the defendants have disclosed their defence. So much so that evidence of the parties is also completed to a substantial extent. At this moment, he says, that the plaintiffs have sought to amend the plaint in a way which in effect would change the very nature of the original pleading of the plaintiff and, therefore, leave the defendant as defenceless at this stage. In this regard, he has referred to a judgment of the Supreme Court in ***Radhika Devi versus Bajrangi Singh and others*** reported in ***1996***

7 SCC 486, that according to the Supreme Court in the same, amendment of plaint should not be granted excepting exceptional cases to preserve the accrued rights.

(4) He has referred to the other judgment of this Court in ***Smt. Dipti Paik and others versus Sri Jogesh Chandra Roy and others*** reported in ***2016 Vol. 1 CHN 461*** which deals with the matter of belated filing of the prayer for amendment and how limitation applies to the same. It is submitted that the Court has held that limitation starts to run from the date of first knowledge of the concerned person. It is submitted that in the instant case, the written statement of the defendants was filed back in the year 2019. The copy thereof was served upon the plaintiff immediately thereafter. Hence, according to the defendants/petitioners, the knowledge of the plaintiffs as regards existence of a gift deed accrued back in the year 2019. It is submitted further that there would not be a justifiable reason for the plaintiff to sit tight even after gathering knowledge as above without challenging the gift deed in any manner whatsoever.

(5) It is the further contention of the petitioners/defendants that, after the trial of the suit having been proceeded enough, the plaintiff has come at a belated stage, seeking amendment of plaint which not only will introduce new grounds in the suit but also will jeopardize the petitioners' rights already accrued through the plaints and evidence. Hence, according to the petitioners/defendants, the impugned order suffers from gross illegality and material irregularity as well. Hence, the same is liable to be dismissed. An appropriate order in this regard has been prayed for by the petitioners/defendants.

(6) The opposite party has been represented by Mr. Rishab Ahmed Khan, learned advocate. According to the plaintiff/opposite party, but for including the amendment as proposed by the plaintiff to be made

in the plaint itself, the real controversy between the parties in the suit cannot be either ascertained or determined by the Suit Court. It is submitted that had not been the proposed amendment allowed by the learned Trial Court, the only alternative would have been left for the plaintiff to file a separate suit thereby resulting into multiplicity of proceeding. It is submitted that the proposed amendment is based on the facts asserted by the defendants/petitioners in their written statement, therefore, it is only in tune of what the defendants have pleaded before the Suit Court and not otherwise. It is submitted that the defendants, therefore, could not have any cogent reason to raise any objection as to the same. So far as the impugned order in question, according to the opposite party/plaintiff, that need not be interfered into being a just, legal and proper one.

(7) Mr. Rishab Ahmed Khan, learned advocate for the defendant has relied on a judgment of the Supreme Court in ***Life Insurance Corporation of India versus Sanjeev Builders Private Limited and another*** reported in ***(2022) 16 SCC 1*** to buttress his submission that amendment cannot be said to be time-barred and can be introduced at any stage in a suit which are necessary for determination of the real controversies in the suit.

(8) Mr. Khan, learned advocate for the opposite party/plaintiff has further submitted that the gift deed relied on by the defendants in the suit is void ab initio and a non-est in the eye of law. By referring to a judgment of the Supreme Court in ***Prem Singh and others versus Birbal and others*** reported in ***(2006) 5 SCC 353,*** he has submitted that provisions under the Limitation Act would not be applicable, where such a document is challenged. The other judgment of the Supreme Court in ***Jagmail Singh and another versus Karamjit Singh and others*** reported in ***(2020) 5 SCC 178*** is also referred to by Mr. Khan while representing the opposite party.

(9) Upon hearing the learned advocates for the respective parties and upon perusal of the materials on record, it transpires that a Partition Suit No. 13 of 2018 was filed by the plaintiff/opposite party in the Court of Civil Judge (Junior Division), Additional Court on July 30, 2018. The present petitioners are the defendants in the said suit who filed their written statement in the suit on March 12, 2019. In the written statement, the defendants/petitioners have stated that one Nanda Dulal Malakar transferred his entire share of 0.01 Acres of land comprised within non-suit plot No. 1749 to his brother Panchanan Malakar by registered deed of gift dated April 20, 1976 and delivered possession of the same to him.

(10) By this way, the defendants being the descendants of Panchanan Malakar, have resisted prayer of the plaintiff/opposite parties for partition of the suit property by meets and bounds on the ground of being owner of the entire plot of land comprised within the plot No. 1749 in Mouja – Andulberia. The defendants/petitioners being the descendants of Panchanan Malakar, has also claimed to be the owner of 8 anna share in suit plot No. 1750 measuring 0.02 Acre of land.

(11) By filing the petition under Order VI Rule 17, CPC, the plaintiff/petitioner on September 01, 2023, has sought to amend the plaint, challenging the legality and validity of the said gift deed claimed by the defendants to have vested their predecessor with the absolute right title interest with respect to the landed property in Plot No. 1749 and 8 anna share in Plot No. 1750 in Mouja- Anduberia.

(12) The principles of amendment of pleading have been well discussed by the Supreme Court in the judgment of ***Sanjeev Builders Private Limited (supra)***. The Supreme Court has relied upon a previous judgment of the same in ***B.K. Narayana Pillai versus***

Parameswaran Pillai reported in ***(2000) 1 SCC 712*** and quoted the following paragraph from the same: -

> **"4.** This Court in *A.K. Gupta & Sons Ltd.* v. *Damodar Valley Corpn.* [AIR 1967 SC 96 : (1966) 1 SCR 796] held:
>
> "The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: *Weldon* v. *Neal* [(1887) 19 QBD 394 : 56 LJ QB 621] . But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See *Charan Das* v. *Amir Khan* [AIR 1921 PC 50 : ILR 48 Cal 110] and *L.J. Leach and Co. Ltd.* v. *Jardine Skinner and Co.* [AIR 1957 SC 357 : 1957 SCR 438]
>
> The principal reasons that have led to the rule last mentioned are, first, that the object of courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes (*Cropper* v. *Smith* [(1884) 26 ChD 700 : 53 LJ Ch 891 : 51 LT 729]) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended (*Kisandas Rupchand* v. *Rachappa Vithoba Shilwant* [ILR (1909) 33 Bom 644 : 11 Bom LR 1042] approved in *Pirgonda Hongonda Patil* v. *Kalgonda Shidgonda Patil* [AIR 1957 SC 363 : 1957 SCR 595]).
>
> The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in *Cooke* v. *Gill* [(1873) 8 CP 107 : 42 LJCP 98 : 28 LT 32] in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in *Robinson* v. *Unicos Property Corpn. Ltd.* [(1962) 2 All ER 24 (CA)] and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have been understood to mean 'new set of ideas': *Dornan* v. *J.W. Ellis and Co. Ltd.* [(1962) 1 All ER 303 (CA)] This also seems to us to be a reasonable view to take. No amendment will be allowed to

introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

Again in *Ganga Bai* v. *Vijay Kumar* [(1974) 2 SCC 393] this Court held: (SCC p. 399, para 22)

"The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the court."

In *Ganesh Trading Co.* v. *Moji Ram* [(1978) 2 SCC 91] it was held: (SCC p. 93, para 4)

"*4*. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued."

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 the 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 the 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 lis 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 allowed 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 (*sic* results) in defeating a legal right accruing to the opposite party 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) The law appears to be well-settled that amendment of pleading is required to facilitate determination of the real controversy in issue in a suit, provided that the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. The Court appreciated the principle that no amendment should be allowed which amounts to or results in defeating a legal right accruing to the opposite party on account of lapse of time.

(14) From the factual background of the instant case, it appears that after filing of the suit in 2019, the present petitioners/defendants disclosed their defence in the written statement in 2019 that is, in the following year. There, they have disclosed about a gift deed being executed in favour of their predecessor. Ultimately, the plaintiff's prayer for amendment of the plaint to incorporate his challenge to the gift deed so pleaded by the defendant, came to have been filed in the year 2023 that is, after lapse of about four years. Evidently, the knowledge of the plaintiff about the deed of gift accrued on the moment of receipt of copy of the written statement. Since thereafter however, the plaintiff continued to participate in the trial of the suit and allowed the Court to examine witnesses and record evidence, without insisting for any amendment of plaint. Thus definitely, the suit has proceeded rendering some vested rights in favour of the either parties in consideration of pleadings and evidence collected so far. Challenge as to the gift deed as relied on

by the defendants after lapse of four years of the proceedings before the Trial Court, in all likelihood, is to jeopardize such rights accrued in favour of the defendant, if any. It is the settled law that though the statute has not provided for any specific time limit within which an amendment should be brought on record, but the proposed amendment should not alter or substitute a new cause of action than that was made out originally in the suit. The proposed amendment also should not defeat the legal right accrued to the opposite party on account of lapse of time to bring on record the proposed amendment by the plaintiff. Tested on the anvil of these principles, the proposed amendment of the plaintiff/opposite party, after lapse of about four years from the initiation of the suit by him and after conclusion of the proceeding to a substantial extent, amounts to be de hors the said settled principles of law concerning amendment of pleading.

(15) The judgment relied on by the opposite party in ***Sanjeev Builders Private Limited (supra)*** actually defends the case of the petitioner/ defendant, more than it helps the opposite party. The principles of law as discussed above have been duly given credit to by the Supreme Court in the same.

(16) The other judgments relied on by the opposite party are found to have no beneficial effect to the case of the opposite party in so far as belated prayer for proposed amendment which is in the nature of changing the nature of the suit itself and, therefore, frustrating the defence, cannot be considered to be such an amendment to advance determination of the real controversies in the suit. The opposite party/plaintiff rather appears to be a fence sitter for a prolonged period of time and, therefore, cannot at this stage be granted opportunity to frustrate the accrued right of the

petitioners/defendants on the basis of the pleadings and evidence collected in the case so far.

(17) The judgment of the Supreme Court in ***Radhika Devi (supra)*** duly supports the contention and prayer of the petitioner in the instant revision. So is the proposition held by this Court in ***Smt. Dipti Paik's case (supra)***.

(18) On the basis of the entire discussion as made above, this Court finds gross illegality and impropriety in the order of the learned Trial Court dated March 18, 2025 in Partition Suit No. 13 of 2018 as impugned in the instant revision. The said is found to be in gross violation of the settled principles of law as well as result of non-application of mind by the Court into the factual background of the case. Hence, accordingly, the said impugned order dated March 18, 2025 passed by Civil Judge (Junior Division), Additional Court, Berhampore, Murshidabad in Partition Suit No. 13 of 2018 is liable to be set aside.

(19) On the finding as above, let this revision be disposed of with the directions as follows: -

i) Impugned order dated March 18, 2025 passed by Civil Judge (Junior Division), Additional Court, Berhampore, Murshidabad in Partition Suit No. 13 of 2018 is set aside.

ii) Let the learned Trial Court proceed with trial of the suit as expeditiously as possible and pass its judgment on the pleadings and evidence collected.

(20) Civil Revision case No. ***CO 3542 of 2025*** is allowed and disposed of.

(21) Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)