



2026:AHC:42073

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 5796 of 2023

Dayanand and 2 others

.....Petitioner(s)

Versus

Mohan @ Ghure

.....Respondent(s)

Counsel for Petitioner(s) : Ashok Kumar Shukla
Counsel for Respondent(s) : Vivek Singh Shrinet

Court No. - 5

HON'BLE MANISH KUMAR NIGAM, J.

1. Heard Shri Ashok Kumar Shukla, learned counsel for the petitioner, Shri Vivek Singh Shrinet, learned counsel for the respondent and perused the record.
2. This petition has been filed challenging the order dated 16.11.2022 passed by the trial court i.e. Additional Civil Judge (Junior Division), Court No. 3, Gorakhpur, rejecting the application for amendment filed by the petitioner in the plaint. Revision against the said order has also been dismissed by order dated 10.04.2023 passed by the Additional District and Sessions Judge, Court No. 4, Gorakhpur in Civil Revision No. 124 of 2022.
3. Contention of the learned counsel for the petitioner is that by the amendment, the petitioner has only changed the relief from mandatory injunction directing the defendants to remove their constructions and to hand over the possession to the plaintiff to the prayer for possession of the property in dispute apart from

minor corrections in the plaint. The said application has been erroneously rejected on the ground that the application has been filed after a long lapse of time and therefore, the same cannot be allowed.

4. Learned counsel for the respondent submitted that in view of the proviso to Rule 17 of Order 6 such amendment cannot be allowed. He further submitted that the proposed amendment will change the nature of the suit.
5. I have perused the order impugned. The relief claimed by the petitioner in the plaint which is at page no.33 of the paper book is quoted as under:

“1- बसदूर डिग्री Mandatory Injunction प्रतिवादीगण को यह आदेश दिया जावे कि वे मकान जैल मुन्दर्जा लिस्ट (ग) मय नक्शा जो नक्शा लिस्ट (ख) जैल में भी बरंग हरा से प्रदर्शित है पर से अपना कब्जा दखल जो दखिनी पश्चिमी पहली मंजिल के कमरे पर एवं दूसरी मंजिल के पश्चिमी उत्तरी कमरे पर तनहा है व बकिया हिस्से पर वादी गण के साथ मुश्तर्का है को उठाकर मकान लिस्ट (ग) जैल पर तनहा कब्जा दखल वादीगण को दे देवे ।”

6. The said relief has been sought to be substituted /amended by the relief as quoted in the amendment application at page no. 39 and the same is quoted as under:

“यह कि बसदूर डिग्री दखल बहक वादीगण खिलाफ प्रतिवादीगण, प्रतिवादीगण को आदेशित कर दिया जावे कि वे मकान जैल मुन्दर्जा लिस्ट (ग) मय नक्शा जो नक्शा लिस्ट (ख) जैल वाद पत्र में बरंग हरा से दर्शित है पर से प्रतिवादीगण का कब्जा दखल जो दखिनी पश्चिमी पहली मंजिल के कमरे पर एवं दूसरी मंजिल के पश्चिमी उत्तरी कमरा पर से कब्जा दखल प्रतिवादीगण हटवाकर न्यायालय द्वारा निर्धारित समय के अन्दर वादीगण को जायदाद नजाई पर कब्जा दखल दिलवा दिया जाय। यदि प्रतिवादीगण न्यायालय द्वारा निर्धारित समय के अन्दर कब्जा दखल वादीगण को नहीं देते है तो उस सूरत में न्यायालय अमीन अथवा वकील कमिश्नर द्वारा कब्जा दखल दिलवा दिया जावे।”

7. I do not find any change in the nature of the suit as the relief in substance is same.
8. So far as the contention of the learned counsel for the petitioner that in view of proviso to Rule 17 of Order 6, the said amendment could not be allowed, is also misconceived. The suit is of the year 1997 which is pre amendment and therefore, amended proviso will not apply to the suit in view of the judgment of the Apex Court in case of **State Bank of Hyderabad v. Town Municipal Council reported in (2007) 1 SCC 765**. Paragraph nos. 5, 6, 7, 8 & 9 of the aforesaid judgment are quoted as under:

"5. Order VI, 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."

6. Proviso appended thereto was added by the Code of Civil Procedure (Amendment) Act, 2002 which came into force with effect from 1.07.2002. It reads as under:

"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. Section 16(2) of the Amending Act of 2002 reads as under:

"16(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub- section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897 -

*(a) *** ***

(b) the provisions of rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and by section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and Section 7 of this Act;"

8. In view of the said provision there cannot be any doubt whatsoever that the suit having been filed in the year 1998, proviso to Order VI, Rule 17 of the Code shall not apply.

9. *The High Court relied upon the said proviso and opined that having regard thereto the plaintiff was obligated to establish that in spite of due diligence it could not have raised the matter before commencement of the trial of the suit. The High Court evidently committed an illegality in relying upon the said provision."*

9. The Supreme Court in case of Sampath Kumar Vs. Ayyakannu and another reported in (2002) 7 SCC 559 has held that delay in filing an application for amendment by itself cannot be a ground for rejecting the application. Paragraph No. 9 of the judgment in case of Sampath Kumar Vs. Ayyakannu(supra) is quoted as under:-

"9. Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment."

10. In my view, orders impugned cannot be sustained, therefore, the order dated 16.11.2022 passed by the trial court i.e. Additional Civil Judge (Junior Division), Court No. 3, Gorakhpur and 10.04.2023 passed by the Additional District and Sessions Judge, Court No. 4, Gorakhpur in Civil Revision No. 124 of 2022, are hereby set-aside.

11. In exercise of power under Article 227 of Constitution of India, I am not remitting the matter back for decision afresh. The

application for amendment filed by the petitioner being Paper No. 140 Ka-2 is allowed. The petitioner is directed to carry out the necessary amendment within three weeks from the date of the order.

12. Since the suit is of the year 1997, it is expected that the court below i.e. Additional Civil Judge (Junior Division) Court No. 3, Gorakhpur to consider and decide the aforesaid case, in accordance with law, expeditiously, preferably within a period of **six months** from the date of production of a certified copy of this order after ensuring service upon all the parties concerned and after giving opportunity of hearing to the parties concerned as well as opportunity to lead evidence in support of their case and without granting unnecessary adjournments to either of the parties provided that there is no other legal impediment.

13. With the aforesaid observation, this petition stands **allowed**.

(Manish Kumar Nigam,J.)

February 25, 2026

Ved Prakash