



2026:AHC:45148

A.F.R.

Reserved On: 24.02.2026

Delivered On: 27.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 14134 of 2024

Anendra Singh

.....Petitioner(s)

Versus

Ram Kishan and another

.....Respondent(s)

Counsel for Petitioner(s)	:	Devesh Kumar Verma, Suresh Chandra Verma
Counsel for Respondent(s)	:	Ajai Singh Kushwaha

Court No. - 5

HON'BLE MANISH KUMAR NIGAM, J.

1. Heard Sri Devesh Kumar Verma, learned counsel for the petitioner and Sri Ajai Singh Kushwaha, learned counsel for the respondents.
2. This petition has been filed challenging the order dated 23.02.2024 passed by the trial court i.e. Additional Civil Judge (Senior Division) Court No. 8, Farrukhabad, rejecting an application for amendment filed by the plaintiff-petitioner in the suit. Against the order dated 23.02.2024, a revision was filed by the petitioner and the same has also been dismissed.
3. Brief facts of the case are that a suit for declaration was instituted on 29.05.2015, claiming ownership of the property in dispute on the basis of Will executed by the original owner of the property in dispute in favour of the petitioner. During pendency of the suit, an amendment application was filed by the petitioner, who was the plaintiff before the court below, in May, 2022 with the allegation that during the pendency

of the suit in June, 2019, the defendants have taken forcible possession of the property in dispute and therefore, the decree of possession may also be passed in favor of the plaintiff-petitioner. The said application was opposed by the defendants and was ultimately dismissed by the trial court. Revision filed against the said order has also been dismissed.

4. It has been contended by learned counsel for the petitioner that the petitioner was only claiming a consequential relief because a cause of action for the same arose after filing of the suit. It has been further submitted by learned counsel for the petitioner that as per the case of the petitioner, the possession was taken forcibly by the defendants in June, 2019 and the consequent amendment application was filed by the petitioner in May, 2022 well within the limitation for filing a suit for possession. It has also been submitted by learned counsel for the petitioner that once a separate suit could have been filed by the petitioner, there was no impediment in allowing the amendment application as the same would result in avoiding the multiplicity of the proceedings.

5. *Per contra*, learned counsel for the respondents vehemently contended that the courts below have committed no illegality in rejecting the amendment application. The amendment application filed by the plaintiff-petitioner was highly delayed as the same was filed almost after three years of the alleged possession being taken by them, which was not admitted to the defendants as they were already in possession. It has been further submitted that the amendment application was hit by the proviso to Rule 17 of Order VI of C.P.C. as the issues have been framed in the suit and the suit has commenced.

6. Considering the rival submissions of the parties, I am of the opinion that the amendment sought by the plaintiff was only to incorporate a relief, which was based on a cause of action which arose after filing of the suit. Since the allegation of the plaintiff was that in June, 2019 the possession was taken and the consequential amendment application was filed in May, 2022 well within three years, the plaintiff

could have filed a separate suit for the same relief which he sought to add in the plaint by seeking an amendment. Once a separate suit is permissible, there is no reason to deny a relief by amendment in the pending suit as the same will avoid multiplicity of the proceedings.

7. In case of **Sampath Kumar versus Ayakannu and others** reported in **(2002) 7 SCC 559**, the Supreme Court was considering the question whether it is permissible to convert through amendment a suit merely for permanent prohibitory injunction into a suit for declaration of title and recovery of possession. In paragraph Nos. 6 and 7, the Supreme Court has held as under:-

"6. It is true that the plaintiff on the averments made in the application for amendment proposes to introduce a cause of action which has arisen to the plaintiff during the pendency of the suit. According to the defendant the averments made in the application for amendment are factually incorrect and the defendant was not in possession of the property since before the institution of the suit itself.

7. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the Trial Court it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the Trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiffs revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings"

8. Order VI Rule 17 of C.P.C. 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-form and seeking determination of the real question 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.

9. So far as contention of learned counsel for the respondents that trial court has rejected the application for amendment on the ground that the issues have been framed in the suit and in the application for amendment, it has not been disclosed as to why the delay has been occurred in filing the amendment application. It has also been held that defendants in their written statement has specifically stated that defendants are in possession over the property in dispute, in such a situation, amendment application cannot be allowed. The same view has been reaffirmed by the revisional court. The view taken by the courts below is erroneous. The merit of amendment cannot be prejudged at the stage of considering the application for amendment. The question as to whether which of the parties is in possession has to be considered and decided after the evidence is led by both the parties.

10. Further, this Court in the case of **Chitranshi Vs. Rajnarayan Tripathi** reported in **2025 (5) AWC 4867** relied upon the judgment of **Mohinder Kumar Mehra Vs. Roop Rani Mehra and others** reported in **(2018) 2 SCC 132** and held that normally the trial commences with the leading of evidence and the proviso to Order VI Rule 17 of C.P.C. prohibited entertainment of amendment application after commencement of the trial with the object and purpose that once parties proceed with the leading of evidence, no new pleading be permitted to be introduced.

11. In the present case, only issues have been framed and it is not the case of either of the parties that any evidence was led at the time of filing of the amendment application.

12. The Supreme Court in case of **Sampath Kumar Vs. Ayyakannu** (supra) 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."

13. In my view, the courts below have erred in law in rejecting the application for amendment. Consequently, the orders dated 23.02.2024 and 03.07.2024 are hereby quashed. The petition is allowed.

14. As the matter is pending since 2019, I am not remitting the same to be decided by the trial court itself and in exercise of powers under Article 227 of the Constitution of India, I am allowing the application for amendment filed by the petitioner. The petitioner shall carry out the amendment within three weeks from the date of production of certified copy of this order before the court below.

(Manish Kumar Nigam,J.)

February 27, 2026

Nitika Sri.