

Court No. - 80

Case :- ORIGINAL SUIT No. - 1 of 2023

Plaintiff :- Bhagwan Shrikrishna Virajman At Katra Keshav Dev
Khewat No. 255 And 7 Others

Defendant :- U.P. Sunni Central Waqf Board And 3 Others

Counsel for Plaintiff :- Awadhesh Prasad, Prabhash Pandey, Pradeep Kumar Sharma, Radhey Shyam Singh, Rajesh Kumar Shukla, Reena S. Singh, Sachidanand Singh

Counsel for Defendant :- Afjal Ahmad, Gulrez Khan, Hare Ram, Nasiruzzaman, Pranav Ojha, Punit Kumar Gupta

Hon'ble Ram Manohar Narayan Mishra, J.

1. S/Sri Hari Shankar Jain, Mahendra Pratap Singh, Saurabh Tiwari, Mrs. Reena N.Singh, Harshit Gupta (through Video Conferencing) and Sri Hare Ram Tripathi, Satyaveer Singh, Kushal Raj Chaudhary, Radhey Shyam Yadav, Prateek Kumar Srivastava, Prabhash Pandey, Mayank Singh, Arya Suman Pandey, Sandeep Kumar Agrahari, Manvendra Kumar, Ashvaneer Kumar Srivastava, Bipin Kumar Jaiswal, Vinay Sharma, Siddharth Srivastava, Rana Singh, Anil Kumar Singh, Ajay Kumar Singh, Tiwari Abhishek Rajesh and Ashish Kumar Srivastava, Ashutosh Pandey, in person, (through video conferencing) for the plaintiffs, are present.

2. Mrs. Tasneem Ahmadi (through video conferencing), Sri Nasiruzzaman, Hare Ram Tripathi, Pranav Ojha, Afzal Ahmad, Tanveer Ahmad Khan and Imran, learned counsel for the defendants, are present.

3. Heard Sri Hari Shankar Jain, learned counsel for the plaintiff and Ms. Tasneem Ahmadi appearing through virtual mode and Sri Nasiruzzaman, learned counsel for the defendant on amendment application **A-67** filed under **Order VI Rule 17 CPC** before this Court.

4. In this amendment application **A-67** filed under **Order VI Rule 17 CPC**, prayer has been made to add certain facts based on notification dated 17.12.1920 issued by Lieutenant Governor, State of United Province and prayer has been made for allowing the plaintiff to implead Union of India through Secretary Ministry of Home Affairs

as defendant no. 5 and ASI as defendant no. 6 in the suits as both amendment application bear identical facts and prayer.

5. In proposed amendment application it is averred that the plaintiffs have come to know that a notification was issued under sub section (3) of Section 3 of Ancient Monuments Preservation Act (VII of 1904) published in official Gazette on 27.12.1920 declaring the property in question as protected monument. In the notification the subject property is mentioned at Serial no. 37. The copy of notification dated 27.12.1920 issued under the authority of Lieutenant governor is annexed as Annexure A-1 to the affidavit.

6. It is further stated in the amendment application that the plaintiff has come to know that the subject property has been declared as centrally protected monument in the list of Agra Circle issued by Archaeological Survey of India (ASI) and same figures at serial no. 139. The list of Centrally Protected Monuments of Agra Circle is available on its website is annexed as Annexure A-2 to the affidavit. Subject matter is centrally protected monument under the provision of the Ancient Monuments and Archaeological Sites and Remains Act 1958. The property in question was declared as protected monument and at present the same is a centrally protected monument therefore it is necessary to place on record such facts by amending the plaint for proper adjudication of the case as the property in question is a centrally protected monument and the same is under the supervision and management of ASI, the plaintiffs propose to implead them as defendants adding their names in the array of the parties after defendant no. 4 and a prayer has been made to implead Union of India and ASI as defendant no. 5 and 6 in the suit. Defendant no. 5 will be designated as Union of India through Secretary, Ministry of Home Affairs, Room No. 113, North Block, New Delhi- 110001, E-mail ID and defendant no. 6 will be depicted as Archaeological Survey of India through Director General, 24, Tilak Marg, Bhagwan Das Lane, Mandi House, New Delhi, Delhi- 110001, E-mail ID.

7. It is also stated in amendment application that after paragraph No. 79, 04 new paragraphs 79A, 79B, 79C and 79D are proposed to be added, which are reproduced as under:-

(i) 79-A: That the notification No. 1669/1133-M was issued under sub section (3) of section 3 of Ancient Monuments Preservation Act (VII of 1904) published in Official Gazette on

27.12.1920 declaring the property in question at serial no. 37 as protected monument.

(ii) 79-B. That the extract from the notification No. 1669/1133-M dated 27.12.1920 is being reproduced herein below:-

No. 1669/1133-M- In exercise of the powers conferred by section 3, sub-section (3) of the Ancient Monuments preservation Act (VII of 1904) His Honour the Lieutenant-Governor is hereby pleased to confirm this department notification no. 1465/1133, dated the 25th November, 1920, published at pages 1911-1924 of part 1 of the United provinces Gazette, dated the 27th November, 1920, relating to the under mentioned monuments.

Sl. No.	Name and description of monument	District	Locality
37	The portions of Katra mound which are not in the position of Nazul tenants on which formerly stood a temple of Keshavadeva which was dismantled and the site utilized for the mosque of Aurangzeb.	Muttra	Kosi on Muttra and Bharatput road, 9 mlies from Muttra

(iii) 79C. That the property involved in the Suit has been included in the list of Centrally Protected Monuments under the provisions of The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short, 'AMASR Act') in the list of Agra Circle published by Archaeological Survey of India and the provisions of the said Act are applicable to the property in question.

(iv) 79D. That the ASI has maintained and published on its website the list of Centrally Protected Monuments including Agra Circle wherein the property in question figures at Sl. No. 139. An extract of the aforesaid list relating to the property in question is reproduced herein below:-

LIST OF CPM OF ASI AGRA CIRCLE FOR WEBSITE"

Sl. No.	Name of monument/site	Locality	District
139	Portions of Katra mound which are not in possession of Nazul tenants on which formerly stood a temple of Keshavadeva which was dismantled and the site utilized for the mosque of Aurangzeb.	Mathura	Mathura

8. In OSUT 01 of 2023, Bhagwan Shri Krishna Virajman Keshav Dev and others vs. U.P. Sunni Central Waqf Board through Chairman and others, a relief for cancellation of decree, declaration, permanent and mandatory injunction and for removal of encroachment has been sought; a prayer clause is found on the foot of plaint at Page No. 98 and 99. In paragraph 79 of the plaint it is stated that deity plaintiff no. 1 and 2 are minor and since 1958 the Trust which was responsible to look after the interest of deity has been non functional. Therefore, cause of action is accruing every day for the relief prayed for in this suit.

9. In amendment application same facts and prayer are included as in amendment application filed in OSUT No. 16 of 2023. Written reply has been filed on amendment application by contesting defendants Committee of Management, Trust of Shahi Masjid Idgah through Sri Nasiruzzaman, learned counsel. Written submissions are also filed by Ms. Tasneem Ahmadi, learned counsel in both suits with regard to amendment which are placed on record.

10. Learned counsel for the defendant submitted that the plaintiffs inter-alia seeks to implead new defendants to the present suit. The present application has been filed under Order VI Rule 17 CPC for amendment of the plaint. She contended that impleadment of the parties to a suit is not permissible under Order VI Rule 17 CPC. Impleadment of the parties is impermissible and under this provision, no new party may be impleaded or added in the array of the parties. The present application is not maintainable as the amendment sought are based upon the impleadment of the said new defendants. Order VI Rule 17 CPC does not provide for impleadment of the parties to a suit.

11. In the alternative, learned counsel also submitted that the application for amendment of the plaint deserves to be kept in abeyance till Hon'ble Supreme Court decides Special Leave Petitions (SLPs) challenging the dismissal of application filed under Order VII Rule 11 CPC vide order dated 1.8.2024 passed by this Court as same would create unforeseen complications for the following reasons:

- a) The Pleadings in the Plaint would change from those that were considered by this Hon'ble Court while dismissing the applications under Order VII Rule 11 CPC.
- b) If the SLPs are allowed by the Hon'ble Supreme Court and the Plaints are rejected, the Plaints that are rejected will be different from those allowed to be amended, thereby causing unnecessary and untold complications in the case.
- c) Any order passed allowing any amendment of the Plaint will tantamount to interference in the proceedings pending before the Hon'ble Supreme Court and hence the said application deserves to be kept in abeyance.

12. Learned counsel also submitted that proposed amendments are in respect of a notification of 1920 and consequential lists prepared by virtue of the said notification. It is submitted that the Notification of 1920 as well as the list referred to has been in the public domain for over a century and. hence the Plaintiffs cannot claim ignorance of the same till 2024. Having failed to incorporate any pleadings in respect of the same in the original Plaint, the amendments sought deserves to be rejected and the Application for amendment dismissed.

13. The amendments sought are in respect of and consequential to the proposed impleadment of the Union of India and the ASI. The proposed parties i.e. the Union of India and the ASI are not impleaded as Defendants to the Suit as yet. The proposed amendments (paras 79 A, B, C & D) are dependant on the Union of India and the ASI being impleaded as parties to the present suit. Since parties cannot be impleaded under Order VI Rule 17 and since the Union of India and the ASI are not parties to the suit, the amendments sought are impermissible in law. The proposed amendments shows that the Plaintiffs are attempting to negate the defence taken by the Defendant that the Suit is barred by the Places of Worship Act 1991 by setting up a new case in the proposed paras 79A, 79B, 79C & 79D and contending that the Shahi Masjid Idgah is to be considered as a

monument under the Ancient Monuments and Archaeological Sites and Remains Act, 1958. The Plaintiffs are amending their Complaint, to try and wriggle out of the defence taken by the defendant that the suit is barred under the Places of Worship Act, 1991. Inasmuch as the plaintiffs by way of proposed amendments are trying to change subject matter of the suit and introduce a new case and same is not permissible under law.

14. The plaintiffs have sought to add new facts by way of amendment that Aurangzeb had demolished the temple and raised the Idgah mosque forcibly; that the deity is the owner in symbolic possession of the property; that the land vests in the deity etc., on the basis of said pleadings, the plaintiffs have sought the relief of conversion of the mosque into a temple.

15. Learned counsel further submitted that undoubtedly the power of amendment conferred by the Code are very wide but they must be exercised in accordance with law and legal principles laid down from time to time and the Court cannot permit an amendment which would involve the setting up of a new case. The judgement of Bombay High Court in *Ma Shwe Mya vs. Maung Mo Hnaung* (1922) L.R. 48 has been cited in support of the proposition wherein it was held that it was not open to a Court under Section 153 and Order VI Rule 17 to allow an amendment which altered the real matter in controversy between the parties. The amendment of complaint has an irreversible effect unless set aside by an appellate court. Thus an amendment if allowed and not set aside by an appellate court, will remain in force and the suit will be finally disposed off on the basis of such amendment. In other words, the amendment is effectively a final order in as much as it has an irreversible effect and cannot be undone at the time of final hearing.

16. Learned counsel placed reliance on the judgement of Full Bench of Chhattisgarh High Court in *Ajay Gupta vs. State of Chhattisgarh and others*, AIR 2017 Chh 45, wherein, Full Bench of the High Court has held as under:-

"What flows from this discussion is that if the order has some irreversible effect which cannot be undone at the time of final hearing, then such order has an element of finality attached to it and cannot be termed as interlocutory order."

17. Learned counsel also cited certain paragraphs of the original plaint in both suits through which it can be discerned that the plaintiffs are not in possession of disputed site and they have stated that the defendants have made encroachment. In this regard paragraph Nos. 59, 63, 77 and 80 in OSUT 01 of 2023 and she has referred paragraph nos. 96, 97, 17, 70 and prayer (c) in OSUT 16 of 2023 in support of her contention.

18. On the other hand Sri Hari Shankar Jain, learned counsel for the plaintiffs submitted that the amendments are very much essential for just and proper adjudication of the case and to decide real controversy between the parties. He further submitted that the proposed amendments are moved to clarify certain facts already introduced in the plaint with a view to fortify the claim of the plaintiff in the suit and by way of present amendment application, essential prayer made in present suit are not likely to be changed. He also submitted that the amendment through which some new facts are to be added shows that the disputed site is protected by ASI and therefore, Union of India and ASI are necessary party to the suit and they need to be impleaded as party.

19. Per contra, Sri Hare Ram Tripathi, learned counsel for defendant no. 3 in submitted that Union of India and ASI who are proposed to be impleaded as party to the suit in both suits are not necessary party as the suit may very well decided without their presence as the dispute is in between Shri Krishna Janambhumi Trust and Committee of Management, Shahi Masjid Idgah and Union of India or ASI has no role to play in present controversy. Inasmuch as the proposed amendments are likely to cause delay in the disposal of the suit.

20. Similarly Ms. Reena N Singh appearing in OSUT 4 of 2023 and 7 of 2023 has also objected t the prayer made by the plaintiffs in OSUT 01 of 2023 and 16 of 2023 regarding prayer for amendment as stated above and submitted that proposed parties are neither necessary nor proper party to the suit and no purpose of law would be served if they are impleaded as party to the suit. She also submitted that ASI has already been impleaded as party in some of the suits which are consolidated in OSUT 01 of 2023 and therefore ASI is represented in set of consolidated suits.

21. Shri M.P. Singh appearing in person in OSUT 13 of 2023 also raised his objection on application for leave to amend the plaint filed by the plaintiffs in both suits and submitted that the proposed defendants are not necessary or proper party to the suit and they need not to be impleaded as party in the suit and facts which are pleaded in amendment application are already there in his suit where ASI has been impleaded as party.

22. Sri Anil Kumar Singh, advocate appeared in OSUT 7 of 2023 also concurred with the contention of Ms. Reena N Singh. Mr. Ashutosh Pandey who appeared in person through virtual mode has also raised objection on amendment application filed in OSUT 01 of 2023 and 16 of 2023.

23. In original plaint of this suit, the plaintiffs have filed a suit for cancellation of decree, declaration, permanent and mandatory injunction and for removal of encroachment. It is averred in the beginning of plaint that suit is being filed for removal of encroachment and superstructure illegally raised by Committee of Management of alleged Trust Masjid Idgah with the consent of Sunni Central Board of Waqf on land Khewat No. 255 at Katra Keshav Dev city Mathura belonging to deity Shree Krishna Virajman. The boundary of property and land of Katra Keshav Dev is described in paragraph-1 of the plaint. The plaintiff no. 1 is a deity recognized under Hindu Law as a minor. He is a juristic person. The plaintiff no. 2 is Asthan, 'Shree Krishna Janmbhoomi. Being Janm Asthan, it is itself deity as the place of birth of Lord Shree Krishna. The plaintiff nos. 3 to 8 are followers of Vedic Sanatan Dharam and are worshippers and devotees of Lord Shree Krishna. It is considered as incarnation of Lord Vishnu according to plaintiffs. The area of birth place of Lord Krishna is non as Katra Keshav Dev. Plaintiffs have given illustration of book written by Indian historian Shri Jadunath Sarkar wherein it is stated that a temple situated at the birth place of Lord Krishna in Mathura was erased under the direction of then rural Aurangzeb in 1970 and a mosque was built on its site.

24. The plaintiffs have prayed for following reliefs in the plaint:-

(a) Decree the suit in favour of Plaintiffs and against the Defendants cancelling the judgment and decree dated 20.7.1973 (Twenty Seven Nineteen Seventy Three) and

judgment and decree dated 7.11.1974 (Seven Eleven Nineteen Seventy Four) and passed in Civil Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven) by Ld. Civil Judge, Mathura;

(b) Declare that the judgment and decree dated 20.7.1973 (Twenty Seven Nineteen Seventy Three) and judgment and decree dated 7.11.1974 (Seven Eleven Nineteen Seventy Four) and passed in Civil Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven) by Ld. Civil Judge, Mathura is not binding on the Plaintiffs;

(c) Decree the suit for declaration declaring that land measuring 13.37 (Thirteen Point Thirty Seven) acres of Katra Keshav Dev shown by letters No. A,B,C,D in the site plan vest in the deity Lord Shree Krishna Virajman;

(d) Decree the suit for mandatory injunction in favour of the Plaintiffs and against the Defendants No.1 (One) and 2 (Two) directing them to remove the construction raised by them encroaching upon the land shown by Letters No. E, B,G,F in the site plan within the area of Katra Keshav Dev City Mathura and to handover vacant possession to Shree Krishna Janmbhoomi Trust within the time provided by the Hon'ble Court;

(e) Decree the suit for prohibitory injunction restraining Defendants No.1 (One) and 2 (Two), their workers, supporters, men, attorneys and every person acting under them from entering into premises of 13.37 (Thirteen Point Thirty Seven) Acres land at Katra Keshav Dev City and District Mathura;

(f) Hon'ble Court may pass any other decree for which Plaintiffs are found entitled to or which may be necessary to be passed in the interest of justice;

(g) Award the costs of the suit;

25. In proposed amendment the plaintiff has sought to add 79-A, 79-B, 79-C, 79-D after paragraph 79 of the plaint to add certain facts related to in notification no. 1669/1133-M dated 27.12.1920 issued by then Lieutenant Governor United Province wherein the portion of Katra mound which are not in the position of nazul tenants on which formerly stood a temple of Keshavadeva which was dismantled and the site utilized for the mosque of Aurangzeb in Muttra (presently Mathura) has been declared as ASI protected monument. In above backdrop, ASI to be impleaded a party as defendant in the suit.

26. Although there is force in the submission of Ms. Tasneem Ahmadi, learned counsel for the defendant that in this application plaintiff has not only sought to amend his pleading in the light of said notification dated 27.12.1920 but has also sought to leave to implead ASI and Union of India as defendant in the suit whereas prayer for impleadment of a proper and necessary party can be made under Order 1 Rule 10 (2) CPC which provides as under:

“Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

27. In present case inspite of filing separate application Order 1 Rule 17 CPC and other under Order 1 Rule 10 CPC for amendment in the pleadings and impleadment of parties respectively, a composite application has been filed by the plaintiffs with prayer to leave to amend the pleadings and also for leave to add two new parties in the suit. In this composite application only order 6 Rule 17 CPC has been mentioned and not order 1 Rule 10(2) CPC under which impleadment can be permitted but this fact cannot be lost sight that the prayer of impleadment of ASI and Union of India is based on new pleadings sought to be incorporated in the plaint in the light of said notification dated 27.12.1920 and both the prayer made in the application for amendment are interlinked. Although it is desirable that separate application should be filed for amendment in the plaint and impleadment of the parties by way of addition in array of the parties of the plaint but there is no such mandate under the scheme of CPC and a composite prayer made in one application for amendment in pleadings as well as in array of the parties is not prohibited altogether. Inasmuch as it is difficult to comprehend that the interest of defendant will be jeopardized if composite prayer in the application for amendment is granted. The law should be taken and applied in broad prospective and hyper-technical approach in the matter will only cause delay in hearing/ disposal of the matter on merits.

28. Delhi High Court in **Rajeev Shukla vs. Gopal Krishna Shukla, CM(M) 2342/2024, CM Appl. 22074 of 2024** has recently observed

that mentioning of wrong section of law in application would not be considered fatal to the case if substance of application was cleared and no prejudice could be caused to the opposite party “Procedural errors, including mentioning incorrect provision of law should not override the substantive justice.”

29. Hon’ble Supreme Court in **Challamane Huchcha Gowda vs. M.R. Tirumala (2024)1 SCC 453 page-459** held that “It is also a settled position of law that a mere non-mentioning or wrong mentioning of a provision in an application is not a ground to reject an application.”

30. In the light of the above judicial authority, amendment application in question may be treated to be filed under Order 6 Rule 17 and Order 1 Rule 10(2) CPC as a composite application. The prayer for amendment in pleadings and impleadment of new party distinctly have already been made in the application. No new prayer has been made in the prayer clause. In my considered opinion, neither nature of suit in case of change nor a new cause of action is being introduced or any new relief is prayed for in proposed amendment. On allowing amendment application, interest of defendant can be said to be affected in such manner that can not be compensated by costs. The proposed amendment is necessary for effective adjudication of real controversy in the matter and also to avoid multiplicity of suit. Thus, prayer for amendment in the plaint is liable to be allowed on payment of Rs. 5,000/- payable to defendant no. 1, main contesting defendant.

31. Let amendment be incorporated in the plaint within a month. The defendant may file addition written statement within two weeks of incorporation of proposed amendment by plaintiffs.

32. List this case on 19.3.2025 at 2:00 pm for further proceedings.

Order Date :- 5.3.2025

Dhirendra/