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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 29th April, 2026

Pronounced on: 03rd July, 2026

+ CS(OS) 320/2018, I.A. 8724/2018, I.A. 11205/2019, I.A. 14831/2022,
I.A. 17693/2022, I.A. 19973/2022, I.A. 39889/2024 & I.A. 2697/2026

PAWWAN KHANNA

.....Plaintiff

Through: Mr. Abhishek Malhotra, Sr. Adv. with
Mr. Kartikay Dutta, Ms. Anukriti
Trivedi and Ms. Aastha, Advs.
Mob: 9582680623
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versus

DEEPAK BAGGA & ANR.

.....Defendants

Through: Mr. Vansh Gandotra, Mr. Kartik
Gandotra, Mr. Naman, Mr.
Madhuresh Chaudhary, Mr. M. F.
Ansari, Advocates for all LR's of D-1
except Akhil Bagga
Mob: 8447872712
Mr. Vikas Mishra and Mr. Krishna
Dev Yadav, Advs. for D-4

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

**I.A. 2697/2026 (Application under Order VII Rule 14(3) read with
Section 151 of the Code of Civil Procedure, 1908 ("CPC") for placing
additional documents on record)**

1. The present application has been filed by the plaintiff to bring on



record the Settlement Agreement dated 24th February, 2025, as filed in *Crl. M.C. 1534/2025*. The said Settlement Agreement was entered into between the son of the deceased defendant no. 1, i.e., Mr. Amit Bagga and the plaintiff to record the correct description of the property in question, that was owned by defendant no. 1, and was intended to be sold by him to the plaintiff.

2. On behalf of plaintiff, it is submitted as follows:

2.1 During the pendency of the suit, Mr. Amit Bagga, against whom a First Information Report (“**FIR**”) being *FIR 127/2018* had been registered, filed the case being *Crl. M.C. 1534/2025*, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“**BNSS**”), seeking quashing of the said FIR. In connection with the said proceedings, the aforementioned Settlement Agreement was executed between Mr. Amit Bagga and the plaintiff, which reiterated the true intention of the parties, concerning the Agreement to Sell.

2.2 Additionally, since the parties’ real intention is not expressed in the said Agreement to Sell, and defendant no. 1 has passed away, his legal heir, Mr. Amit Bagga, who is also the attesting witness to the Agreement to Sell, represents the deceased defendant no. 1 in the proceedings. In view of the same, plaintiff claims that it was admitted by the said legal heir of defendant no. 1 in the Settlement Agreement, that the true intention of the defendant no. 1 and the plaintiff was regarding the sale of the suit property having the description as mentioned by the plaintiff in application bearing no. *I.A. 39889/2024*.

3. *Per contra*, taking on record of the said Settlement Agreement has been opposed by defendant no. 4 on the ground that the same has been filed



on 27th January, 2026, with considerable delay of almost one year, as the purported Settlement Agreement had been in possession of the plaintiff since 24th February, 2025. The plaintiff had all along been sleeping over his right, and therefore the said application ought not be allowed. It is further the case of defendant no. 4 that the purported Settlement Agreement and its timing indicate a collusion between the plaintiff and the legal heir of defendant no. 1.

4. This Court has heard the learned counsels for the parties and has perused the record.

5. At the outset, it is to be noted that the provision regarding production of document on which the plaintiff sues or relies is contained in Order VII Rule 14(3) of the CPC, which reads as under:

“xxx xxx xxx

14. Production of document on which plaintiff sues or relies.—

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.

xxx xxx xxx”

(Emphasis Supplied)



6. As per Order VII Rule 14(3) of the CPC, a document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. In order to get leave of the Court to produce the additional document, the plaintiff must satisfy the Court that the documents were not in the possession or power of the plaintiff, despite due diligence. Furthermore, the Court is required to examine whether there is sufficient cause for the documents not having been filed along with the plaint.

7. Thus, in the context of filing of additional documents, in the case of ***Md. Islamuddin Versus S.S. Kapoor, 2022 SCC OnLine Del 3608***, this Court held as follows:

“xxx xxx xxx

10. Mr. Sanjeev Kumar has correctly drawn my attention to the following passage from Sudhir Kumar [2021 SCC OnLine SC 734] in which the Supreme Court has clearly held that while examining the application under Order XI Rule 1(5) of the CPC the court is not entitled to pronounce on the correctness of the genuineness of the documents which the petitioner seeks to introduce:

“35. Even the reason given by the learned Commercial Court that the invoices being suspicious and therefore not granting leave to produce the said invoices cannot be accepted. At the stage of granting leave to place on record additional documents the court is not required to consider the genuineness of the documents/additional documents, the stage at which genuineness of the documents to be considered during the trial and/or even at the stage of deciding the application under Order XXXIX Rule 1 that too while considering prima facie case. Therefore, the learned Commercial Court ought to have granted leave to the plaintiff to rely on/produce the invoices as mentioned in the application as additional documents.”



11. The Court is therefore, only required to examine whether there is sufficient cause for the documents not having been filed along with the plaint. The evidentiary or other value of the document vis-a-vis the controversy in issue in the plaint, is a consideration alien to Order XI Rule 1(5).

xxx xxx xxx”

(Emphasis Supplied)

8. In the present case, the Settlement Agreement, which is sought to be placed on record as an additional document, was executed on 24th February, 2025, and therefore, could not have been in the power or possession of the plaintiff at the time of the filing of the suit in the year 2018.

9. The defendant no. 4 has contended that since the present application was only filed on 27th January, 2026, i.e., after one year of the execution of the Settlement Agreement dated 24th February, 2025, the plaintiff has not been diligent in placing the document on record. This Court is of the view that though the plaintiff ought to have moved the present application earlier, the Court has to ensure that the rules of procedure must not prejudice any party from raising their case.

10. The plaintiff seeks to place reliance on the said Settlement Agreement to show the correct description of the property in dispute. The contention of defendant no. 4 that the Settlement Agreement is a convenience document, and that there was collusion between the plaintiff and legal heir of defendant no. 1, can be raised at the appropriate stage in the suit proceedings.

11. Keeping in view that the present suit is at a pre-trial stage, and pleadings are yet to be completed, the Settlement Agreement dated 24th February, 2025 is taken on record. Needless to state, the relevancy and admissibility of the said document, would be subject matter of trial.



12. With the aforesaid directions, the present application is accordingly allowed and disposed of.

I.A. 39889/2024 (Application under Order VI Rule 17 read with Section 151 of CPC for amendment in plaint)

13. The instant suit has been filed by the plaintiff, seeking specific performance of the Agreement to Sell and General Power of Attorney (“GPA”) dated 05th January, 2016, executed between the plaintiff and defendant no. 1, in respect of property being 8 *Bighas* and 32 *Biswas* in *Mustatil No. 61, Kila Nos. 16/2 (1-05) and 17/1 (3-11)*, situated in *Revenue Estate of Village Jonapur, Tehsil Mehrauli, New Delhi-110047* (“**property in original plaint**”).

14. At the outset, this Court notes that the plaintiff had initially filed application being *I.A 11146/2019*, seeking amendment of the plaint. However, the plaintiff withdrew the said application, and filed another application being *I.A 20002/2022*, to seek amendment of the plaint.

15. Thereafter, this Court *vide* order dated 17th September, 2024, permitted the plaintiff to withdraw *I.A 20002/2022*, as the plaintiff had filed the present application being *I.A 39889/2024*, as a comprehensive application seeking amendment of the plaint.

16. The present application has been filed on behalf of the plaintiff under Order VI Rule 17, read with Section 151 of CPC, seeking amendment of the plaint in the following terms:

- i. Amendment of the property description in the plaint;
- ii. Additional prayer seeking mandatory injunction against defendant no. 1 to rectify the property description in the Agreement to Sell;
- iii. Amendment in the plaint to include pleadings with respect to the sale



of property in question from defendant no. 2 to defendant no. 3 and subsequently, from defendant no. 3 to defendant no. 4.

- iv. Additional prayers seeking handing over of the possession of property in question as well as declaration of Sale Deeds dated 23rd May, 2018 and 20th July, 2022 as being null and void.
- v. Further, an alternative prayer for refund of Rs. 4,50,00,000/- (Rupees Four Crores Fifty Lakhs Only) paid by the plaintiff to defendant no. 1, along with interest at the rate of 18% per annum since 06th January, 2016, i.e., the date of payment till the date of realisation has been sought.

17. The case, as canvassed by the plaintiff, is as follows:

17.1 Defendant no. 1 offered to sell a certain property to the plaintiff, and executed Agreement to Sell and GPA in favour of the plaintiff.

17.2 The Agreement to Sell and the GPA describe the property to be sold by defendant no. 1 to the plaintiff as *3 Bighas* and *12 Biswas*, out of the land measuring *4 Bighas* and *16 Biswas*, owned by defendant no. 1, in *Mustatil No. 61, Killa Nos. 16/2 (1-05), and 17/1(3-11)*, situated in the *Revenue Estate of Village Jonapur, Tehsil Mehrauli, New Delhi-110047* (“**property in original Agreement to Sell**”).

17.3 On 06th January, 2016, the plaintiff paid the entire sale consideration of Rs. 4,50,00,000/- (Rupees Four Crores and Fifty Lakhs Only) to defendant no. 1, wherein, Rs. 4,00,00,000/- (Rupees Four Crores Only) was paid in cash and Rs. 50,00,000/- (Rupees Fifty Lakhs Only) was paid through RTGS. However, despite receipt of the entire consideration, defendant no. 1 delayed the execution of the Sale Deed.



17.4 Further, upon inquiry, the plaintiff discovered that defendant no. 1 had already executed a Sale Deed dated 30th May, 2016, in favour of defendant no. 2. Therefore, the plaintiff filed the present suit seeking a decree of specific performance, directing defendant no. 1 to execute a Sale Deed in favour of the plaintiff. The plaintiff also sought a decree of permanent injunction restraining the defendants from creating third party rights in the property, and a declaration that the Sale Deed dated 30th May, 2016 is null and void.

17.5 However, it was subsequently discovered by the plaintiff that defendant no. 1 was not the owner of *Killa No. 17/1 (3-11)*, as mentioned in the property description in original plaint as well as in original Agreement to Sell. The said *Killa No. 17/1(3-11)* was mentioned owing to an inadvertent error, and misrepresentation by defendant no. 1 as to the correct description of the property. The said misrepresentation amounted to mutual mistake between the parties.

17.6 Thus, as per the plaintiff, the defendant no. 1 was the owner of only 4 *Bighas* and 16 *Biswas* comprised in *Mustatil No. 60, Khasra No. 20 (2-12)* and *Mustatil No. 61, Khasra Nos. 16/3 min (0-06), 16/1 min (0-13), and 16/2 min (1-05)*, situated in *Revenue Estate of Village Jonapur, Tehsil Mehrauli, New Delhi* (“**proposed entire property**”). Out of this, the defendant no. 1 intended to sell 3 *Bighas* and 12 *Biswas* of land to the plaintiff.

17.7 Therefore, the plaintiff seeks an amendment of the property description in the plaint, as well as a prayer for rectification of the Agreement to Sell, to reflect the correct property intended to be sold by defendant no. 1 to the plaintiff.



17.8 Rectification of the property description in the Agreement to Sell is sought under Section 26 of the Specific Relief Act, 1963 (“**Specific Relief Act**”) to reflect the correct property description intended to be sold by defendant no. 1 to the plaintiff as being 3 *Bighas* and 12 *Biswas* out of 4 *Bighas* and 16 *Biswas*, comprised in *Mustatil No. 60, Khasra No. 20 (2-12)* and *Mustatil No. 61, Khasra Nos. 16/3 min (0-06), 16/1 min (0-13), and 16/2 min (1-05)*, situated in *Revenue Estate of Village Jonapur, Tehsil Mehrauli, New Delhi* (“**amended suit property**”).

17.9 The description of the property in original plaint, i.e., 8 *Bighas* and 32 *Biswas* in *Mustatil No. 61, Kila Nos. 16/2 (1-05) and 17/1 (3-11)* also requires to be amended to reflect the amended suit property, i.e., 3 *Bighas* and 12 *Biswas* out of 4 *Bighas* and 16 *Biswas*, comprised in *Mustatil No. 60, Khasra No. 20 (2-12) and Mustatil No. 61, Khasra Nos. 16/3 min (0-06), 16/1 min (0-13), and 16/2 min (1-05)*, situated in *Revenue Estate of Village Jonapur, Mehrauli, New Delhi*.

17.10 Section 26 of the Specific Relief Act allows rectification of an instrument and a consequential amendment to the plaint, where the instrument and the consequent pleadings do not express the real intention of the parties on account of mutual mistake or fraud. The real intention of the plaintiff and defendant no. 1 is not expressed in the Agreement to Sell. This is evident from the Settlement Agreement dated 24th February, 2025, wherein, the legal heir of deceased defendant no. 1, i.e., Mr. Amit Bagga has acknowledged the amended suit property to be the correct property description, intended to be sold by defendant no. 1 to the plaintiff.



17.11 Even otherwise, the defendant no. 1 had acquired only 4 *Bighas* and 16 *Biswas* from two different sellers. Hence, the description of the property in original plaint, i.e., 8 *Bighas* and 32 *Biswas* is not tenable.

17.12 The plaintiff further seeks to amend the plaint to incorporate subsequent developments with respect to the property in question, including, the sale of the property in question by defendant no. 2 to defendant no. 3 *vide* Sale Deed dated 23rd May, 2018. The application further seeks to incorporate in the plaint that the property in question was transferred by defendant no. 3 to defendant no. 4 *vide* Sale Deed dated 20th July, 2022, allegedly in violation of the *status quo* orders dated 09th July, 2018 and 20th August, 2019.

17.13 The application seeks to amend the plaint to incorporate additional prayers, including, a declaration that the Sale Deeds dated 23rd May, 2018 and 20th July, 2022, be declared null and void.

17.14 The amendments sought are essential for the purpose of complete adjudication of disputes between the parties. Further, the aforementioned amendments do not espouse setting up of a new case, or cause a fundamental change in the nature of the suit, as the suit remains one for specific performance.

17.15 The amendment sought is not barred by limitation as the amendment, as and when allowed, will date back to the date of institution of the suit.

17.16 The contention of delay and *mala fide* conduct on part of the plaintiff, is unmerited as the application for amendment of the plaint had been filed in 2022, upon discovering the error in the property description. However, upon realizing that the Agreement to Sell would also need to be rectified, the earlier application was withdrawn, with liberty to file the present application.



Further, the right of the defendants to present their case remains intact as they can file amended written statements to the amended plaint.

17.17 Since the suit is at a nascent stage, the said amendment should be allowed in the interest of justice, placing the correct description of the suit property on record, as the same forms the very basis of the suit of specific performance.

18 *Per contra*, on behalf of defendant no. 4, it is submitted as follows:

18.1 Defendant no. 4 is the *bona fide* purchaser, without notice of the proposed entire property, i.e., 4 *Bighas* and 16 *Biswas*, comprised in *Mustatil No. 60, Killa No. 20 (2-12)* and *Mustatil No. 61, Killa Nos. 16/3 min (0-06), 16/1 min (0-13) and 16/2 min (1-05)* in *Revenue Estate of Village Jonapur, Mehrauli, New Delhi*, in terms of the registered Sale Deed dated 20th July, 2022, executed by defendant no. 3 in favour of defendant no. 4. Defendant no. 4 is in actual and exclusive peaceful possession of the said property.

18.2 Without prejudice to their rights and contentions, no objection is raised *qua* amendments that merely incorporate the factual existence of the two subsequent Sale Deeds, executed between defendant nos. 2 and 3 as well as defendant nos. 3 and 4, and consequential reliefs related to the same. However, defendant no. 4 opposes the proposed amendments to the property description in the Agreement to Sell and the plaint.

18.3 The proposed amendments are *mala fide* and dishonest as the plaintiff has made a false statement before this Court that he became aware of the correct property description during the pendency of the earlier application being *I.A 20002/2022*. The plaintiff was aware of the correct description of the property owned by defendant no. 1 well before filing of the present suit



as well as the execution of the alleged Agreement to Sell dated 05th January, 2016.

18.4 This is evident from the FIR dated 04th May, 2018, lodged by the plaintiff which clearly shows the correct description of the property. In the said FIR, the plaintiff admitted to having visited the property even before 05th January, 2016, and that he was provided with property papers to check title/ownership. In the FIR, it is the plaintiff's own case that despite being aware of the correct property description, the alleged Agreement to Sell was entered into due to cheating and misrepresentation on behalf of defendant no. 1.

18.5 Further, the Sale Deeds dated 30th May, 2016 and 23rd May, 2018, entered into between defendant nos. 1 and 2 and defendant nos. 2 and 3 respectively, as well as the bail application dated 06th June, 2018 of Mr. Amit Bagga, mention the correct description of the property owned by defendant no. 1.

18.6 Thus, in view of the false statement made by the plaintiff that they became aware of the error in property description only in the year 2022, the present amendment application should not be allowed. Further, the present application is also hit by delay and laches as the plaintiff has sought the amendment in the property description, six years after the institution of the present suit, and has not provided any reasonable explanation as to the inordinate delay.

18.7 The amendment sought by the plaintiff would change the very nature of the present suit and amounts to setting up of a new case.

18.8 The original suit was filed for specific performance with respect to the description of the property in original plaint, i.e., 8 *Bighas* and 32 *Biswas* in



*Mustatil No. 61, Kila Nos. 16/2 (1-05) and 17/1 (3-11), situated in Revenue Estate of Village Jonapur, Tehsil Mehrauli, New Delhi-110047. However, from the bare perusal of the Agreement to Sell, it can be inferred that the same refers to only 3 Bighas and 12 Biswas comprised in Mustatil No. 61, Kila Nos. 16/2 (1-05) and 17/1 (3-11), situated in Revenue Estate of Village Jonapur, Mehrauli, New Delhi-110047. Hence, plaintiff, by way of the instant application is now attempting to not only change the property intended to be sold by defendant no. 1, but also the entire property owned by defendant no. 1, contrary to what is expressly enumerated under both Agreement to Sell as well as the original plaint. This amounts to setting up of a new case *qua* different properties, neither stated in the plaint nor the Agreement to Sell, and in variance thereto.*

18.9 Description and particulars of suit property are a fundamental aspect of a suit for specific performance. The proposed amendment to the description of the property owned by defendant no. 1, as well as what was allegedly intended to be sold to the plaintiff, amounts to filling of a fresh suit for specific performance with respect to a different property, after a delay of eight years from the execution date of the alleged Agreement to Sell.

18.10 The amendment sought by the plaintiff would change the very nature of the present suit from specific performance and declaration to a suit for rectification also. Rectification under Section 26 of the Specific Relief Act is permitted only on the grounds of mutual mistake or fraud, and not unilateral/deliberate mistake or misrepresentation. However, since the case set up by the plaintiff in the FIR was that the defendant no. 1 misrepresented the description of the suit property to the plaintiff, the relief of rectification of the Agreement to Sell cannot be granted.



18.11 The proposed amendments to the description of the property would amount to filing of a fresh suit for rectification and specific performance with regard to a completely different property, which was neither stated in the plaint nor the Agreement to Sell. Further, the amendment sought in the property description in the suit is inconsistent with the description of the property in the Agreement to Sell.

18.12 The proposed amendments are *ex facie* barred by limitation as any suit for rectification of the Agreement to Sell dated 05th January, 2016, and the consequent relief of specific performance, could have been filed by the plaintiff only within three years of the execution of the Agreement to Sell, i.e., by January 2019. As the plaintiff cannot be permitted to file a fresh suit for rectification of the Agreement to Sell after eight years of its execution, no amendment to incorporate any relief of rectification can be permitted.

18.13 The proposed amendment would change the very nature of the dispute between the parties. As per the original plaint, the plaintiff alleged that defendant no. 1 did not register the Sale Deed in favour of the plaintiff, despite the execution of the alleged Agreement to Sell and payment of the entire sale consideration by the plaintiff. Rather, defendant no. 1 executed a Sale Deed dated 30th May, 2016 in favour of the defendant no. 2.

18.14 However, in contradiction to the aforesaid, the plaintiff now seeks to set up a new case that defendant no. 1 misrepresented the details of the property intended to be sold to the plaintiff, and that the property which was intended to be sold was not recorded correctly in the Agreement to Sell. The plaintiff also cannot be allowed to set up a new case of misrepresentation on behalf of defendant no. 1 as the same is contrary to the earlier case set up by the plaintiff in the plaint, that defendant no. 1 was delaying execution of the



Sale Deed and had cheated the plaintiff.

18.15 In a suit for specific performance, effect has to be given to the clear, plain and unambiguous language used in the agreement to understand the true intent of the parties. Specific performance of terms which are not part of the agreement cannot be directed.

18.16 The proposed amendment, if allowed, will result in grave injustice to defendant no. 4. This is because the original suit was limited to *Mustatil No. 61, Kila No. 16/2 (1-05)*, and if the amendment is allowed, the suit would encompass the remaining portion of the property also, i.e., *3 Bighas and 11 Biswas*, comprised in *Mustatil No. 60, Khasra No. 20 (2-12)* and *Mustatil No. 61, Khasra Nos. 16/3 min (0-06) and 16/1 min (0-13)*. The amendments sought in the property description are not formal or clerical in nature. Rather, the plaintiff has sought to add various *Khasra Nos.* and *Mustatil Nos.*, with different dimensions and area, and seeks to give up the land as originally pleaded in the plaint, and instead lay a claim on the property owned by defendant no. 4. This would gravely prejudice the substantive right of defendant no. 4.

18.17 The inaction by the plaintiff to seek the proposed amendments for a period of six to eight years is a valid defense in favour of defendant no. 4, and if the amendment is allowed, the defendant no. 4 will lose the said defense. The amendment, if allowed, would also delay the outcome of the suit, which has already been pending for the last seven years.

18.18 The reliance placed by the plaintiff on the Settlement Agreement dated 24th February, 2025 is misplaced as the same is indicative of collusion between the plaintiff and the legal heirs of the deceased. The Settlement Agreement was entered into to settle the FIR filed by the plaintiff against the



legal heirs of deceased defendant no. 1, and is therefore, a document of convenience and an outcome of *quid pro quo* between the plaintiff and the legal heirs of defendant no. 1. By way of the Settlement Agreement, the parties have shifted the blame of receiving the amount of Rs. 4,50,00,000/- (Rupees Four Crores Fifty Lakhs Only) on the deceased defendant no. 1, and in exchange, the FIR against the two legal heirs of defendant no. 1 has been quashed, particularly, in light of the estranged relationship between defendant no. 1 and his two legal heirs.

18.19 The proposed amendments are not relevant or necessary for determination of the real question in controversy in the suit, as the suit has to be decided on the basis of the property description mentioned in the suit and the Agreement to Sell, and not the proposed amendments.

19. *Vide* order dated 23rd January, 2026, this Court recorded the submissions made by the learned counsels appearing for defendant nos. 2 and 3, that they wish to adopt the arguments submitted by defendant no. 4 for the present application.

20. This Court has heard the learned counsels for the parties, and perused the record.

21. At the outset, this Court notes that the plaintiff has withdrawn the relief of amendment in the plaint to the extent of the alternative prayer for seeking refund.

22. This Court also notes that the defendant no. 4 does not object to the amendments sought in the plaint with respect to incorporation of the factum of the subsequent Sale Deeds between defendant nos. 2 and 3, and defendant nos. 3 and 4, as well as the prayers sought with regard thereto.



23. The law with regard to amendment of pleadings is governed by Order VI Rule 17 of the CPC, which reads as under:

“xxx xxx xxx

17. Amendment of pleadings.— The Court may at any stage of the proceedings allow either party to alter or amend his pleading 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.

xxx xxx xxx”

(Emphasis Supplied)

24. The factors to be taken into consideration by a Court while deciding an application for amendment of pleadings under Order VI Rule 17 of the CPC has been comprehensively laid down in the case of ***Revajeetu Builders and Developers Versus Narayanaswamy and Sons and Others***, (2009) 10 SCC 84, wherein, the Supreme Court held as under:

“xxx xxx xxx

35. The general principle is that courts at any stage of the proceedings may allow either party to alter or amend the pleadings in such manner and on such terms as may be just and all those amendments must be allowed which are imperative for determining the real question in controversy between the parties. The basic principles of grant or refusal of amendment articulated almost 125 years ago are still considered to be correct statement of law and our courts have been following the basic principles laid down in those cases.

36. In the leading English case of Cropper v. Smith [(1884) 26 Ch D 700 (CA)], the object underlying amendment of pleadings has been laid down by Brown, L.J. in the following words: (Ch D pp. 710-11)

“... it is a well-established principle that the object of courts is to decide the rights of the parties, and not to punish them for



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mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. ... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or of grace. ... It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right."

(emphasis supplied)

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50. In similar circumstances, in a subsequent case *Ganesh Trading Co. v. Moji Ram* [(1978) 2 SCC 91], this Court reiterated the law laid down in *Purushottam Umedbhai & Co.* [AIR 1961 SC 325] The Court observed: (*Ganesh Trading Co.* [(1978) 2 SCC 91] , SCC pp. 93-94, para 5)

"5. It is true that, if a plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time. But, mere failure to set out even an essential fact does not, by itself, constitute a new cause of action. A cause of action is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit. It must be antecedent to the institution of the suit. If any essential fact is lacking from averments in the plaint the cause of action will be defective. In that case, an attempt to supply the omission has been and could sometimes be viewed as equivalent to an introduction of a new cause of action which, cured of its shortcomings, has really become a good cause of action. This,



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however, is not the only possible interpretation to be put on every defective state of pleadings. Defective pleadings are generally curable if the cause of action sought to be brought out was not ab initio completely absent. Even very defective pleadings may be permitted to be cured, so as to constitute a cause of action where there was none, provided necessary conditions such as payment of either any additional court fees, which may be payable, or, of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the courts should, ordinarily, refuse prayers for amendment of pleadings.”

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55. In *Haridas Aildas Thadani v. Godrej Rustom Kermani* [(1984) 1 SCC 668] this Court said that: (SCC pp. 669-70, para 1)

“1. ... It is well settled that the Court should be extremely liberal in granting prayer of amendment of pleading unless serious injustice or irreparable loss is caused to the other side. It is also clear that a Revisional Court ought not to lightly interfere with a discretion exercised in allowing amendment in absence of cogent reasons or compelling circumstances.”

56. In *B.K. Narayana Pillai v. Parameswaran Pillai* [(2000) 1 SCC 712], a suit was filed by A for recovery of possession from B alleging that B was a licensee. In the written statement B contended that he was a lessee. After the trial began, he applied for amendment of the written statement by adding an alternative plea that in case B is held to be a licensee, the licence was irrevocable. The amendment was refused. Setting aside the orders refusing amendment, this Court stated: (SCC p. 715, para 3)

“3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and [the Supreme Court]. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the



2026:0



DHC:5341

general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.”

57. In *Suraj Prakash Bhasin v. Raj Rani Bhasin* [(1981) 3 SCC 652] this Court held that: (SCC p. 653)

“... liberal principles which guide the exercise of discretion in allowing amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be readily granted while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted on the opposite party under pretence of amendment, that one distinct cause of action should not be substituted for another and that the subject-matter of the suit should not be changed by amendment.”

Whether amendment is necessary to decide real controversy

58. The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the courts' discretion in grant or refusal of the amendment.

No prejudice or injustice to other party

59. The other important condition which should govern the discretion of the court is the potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily, if the other side is compensated by costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side. The courts have very wide discretion in the matter of amendment of pleadings but court's powers must be exercised judiciously and with great care.

xxx xxx xxx

Costs

61. The courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs. The imposition of costs is an important judicial exercise



particularly when the courts deal with the cases of amendment. The costs cannot and should not be imposed arbitrarily. In our view, the following parameters must be taken into consideration while imposing the costs. These factors are illustrative in nature and not exhaustive:

(i) At what stage the amendment was sought.

(ii) While imposing the costs, it should be taken into consideration whether the amendment has been sought at a pre-trial or post-trial stage.

(iii) The financial benefit derived by one party at the cost of other party should be properly calculated in terms of money and the costs be awarded accordingly.

(iv) The imposition of costs should not be symbolic but realistic.

(v) The delay and inconvenience caused to the opposite side must be clearly evaluated in terms of additional and extra court hearings compelling the opposite party to bear the extra costs.

(vi) In case of appeal to higher courts, the victim of the amendment is compelled to bear considerable additional costs.

All these aspects must be carefully taken into consideration while awarding the costs.

62. The purpose of imposing costs is to:

(a) discourage mala fide amendments designed to delay the legal proceedings;

(b) compensate the other party for the delay and the inconvenience caused;

(c) compensate the other party for avoidable expenses on the litigation which had to be incurred by the opposite party for opposing the amendment; and

(d) to send a clear message that the parties have to be careful while drafting the original pleadings.

Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;



2026:0



DHC:5341

- (2) whether the application for amendment is bona fide or mala fide;
(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

64. The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.

xxx xxx xxx”

(Emphasis Supplied)

25. In this backdrop, the question that arises before this Court is whether the plaintiff should be allowed to amend the description of the property in the plaint. A further question has also arisen as to whether the plaintiff should be permitted to incorporate an additional prayer for seeking rectification of the property description in the Agreement to Sell.

26. In this regard, it would be apposite to refer to Section 26 of the Specific Relief Act which lays down when an instrument may be rectified, in the following manner:

“xxx xxx xxx

26. When instrument may be rectified.—(1) When, through **fraud or a mutual mistake** of the parties, a contract or other instrument in



writing [not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956), applies] **does not express their real intention**, then—

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

(b) **the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or**

(c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

(2) If, any suit in which a contract or other instrument is sought to be rectified under sub section (1), **the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.**

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

(4) **No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed:**

Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

xxx xxx xxx”

(Emphasis Supplied)

27. A perusal of Section 26(1)(b) of the Specific Relief Act shows that when a contract or instrument in writing does not express the real intention of the parties due to fraud or a mutual mistake, the plaintiff may in any suit, in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified. Section 26(4) of the Specific Relief Act further provides that no relief for the rectification of an instrument shall be granted to any party, unless it has been specifically claimed. However, *Proviso* to Section 26(4) of the Specific Relief Act provides an exception



thereto, and states that where a party has not claimed any such relief in his pleading, the Court shall, at any stage of the proceeding, allow him to amend the pleading, on such terms as may be just, for including such claim.

28. Thus, plain reading of the said provision makes it evident that even where a party has not claimed the relief of rectification in the pleadings, the Court shall, at any stage of the proceeding, allow such party to amend the pleading, on such terms as may be just, for including such claim.

29. It is the case of the plaintiff that the plaintiff discovered that the property description mentioned in the Agreement to Sell has been recorded incorrectly, due to the misrepresentation made by defendant no. 1 as to the particulars of the property. Plaintiff has also claimed that the said “misrepresentation” be read as a mutual mistake between the parties.

30. In the facts and circumstances of the present case, when defendant no. 1 entered into the Agreement to Sell with the plaintiff, the property description intended to be sold was recorded as *3 Bighas and 12 Biswas*, out of *4 Bighas and 16 Biswas*, owned by defendant no. 1, in *Mustatil No. 61, Killa Nos. 16/2 (1-05), and 17/1 (3-11)*, situated in the *Revenue Estate of Village Jonapur, Tehsil Mehrauli, New Delhi-110047*, i.e., the property in original Agreement to Sell.

31. However, it is undisputed that defendant no. 1 was only the owner of land measuring *4 Bighas and 16 Biswas* comprised in *Mustatil No. 60, Khasra No. 20 (2-12) and Mustatil No. 61, Khasra Nos. 16/3 min (0-06), 16/1 min (0-13), and 16/2 min (1-05)*, situated in *Revenue Estate of Village Jonapur, Tehsil Mehrauli, New Delhi*. The same is also evident from the Sale Deeds dated 31st January, 2014, executed between M/s Taurus



Buildwell Private Limited and defendant no. 1, as well as the one between M/s S.S. Nature Home Developers Private Limited and defendant no. 1. Moreover, defendant no. 1 did not own any other land, in the said area in question. Thus, evidently there exists a discrepancy in the particulars of the property recorded in the Agreement to Sell and the land owned by defendant no. 1, in the said area. Further, no site plan had been annexed to the said Agreement to Sell.

32. Both the plaintiff and defendant no. 1 intended the sale of a particular parcel of land. Further, a person would only intend to sell what he himself possesses. Thus, clearly the land measuring *3 Bighas* and *12 Biswas* that defendant no. 1 intended to sell to the plaintiff, as mentioned in the Agreement to Sell, would be out of the land measuring *4 Bighas* and *16 Biswas*, owned by defendant no. 1. Since defendant no. 1 did not own *Killa No. 17/1 (3-11)*, he could not have intended to sell it to the plaintiff. The land measuring *4 Bighas* and *16 Biswas* that defendant no. 1 owned, comprised not only in *Mustatil No. 61, Killa No. 16/2 (1-05)* as mentioned in the Agreement to Sell, but also in *Mustatil No. 60, Khasra No. 20 (2-12)* and *Mustatil No. 61, Khasra Nos. 16/3 min (0-06) and 16/1 min (0-13)*. Therefore, defendant no. 1 would have intended to sell *3 Bighas* and *12 Biswas* of land to the plaintiff, out of the *4 Bighas* and *16 Biswas* in *Mustatil No. 60, Khasra No. 20 (2-12); Mustatil No. 61, Khasra Nos. 16/3 min (0-06), 16/1 min (0-13) and 16/2 min (1-05)*, situated in *Revenue Estate of Village Jonapur, Tehsil Mehrauli, New Delhi*. There seems to be a clerical mistake in recording the correct *Mustatil Nos.* and *Khasra Nos.* in the property description in the Agreement to Sell, by mutual mistake of the parties.



33. In this regard, reference is made to the decision of the Madras High Court in the case of *Natarajan Asari Versus Pichamuthu Asari, 1971 SCC OnLine Mad 167*, wherein, the Court held as under:

“xxx xxx xxx

The next decision referred to by the learned counsel is the one reported in Bepin Krishna Ray v. Jogeshwar Ray (A.I.R. 1921 Cal. 730.). The headnote therein runs as follows:

“In every case where rectification is sought, it must clearly, and satisfactorily appear that the precise terms of the contract had been orally agreed upon and that the writing afterwards signed failed to be, as it was intended, an execution of such previous agreement, but on the contrary expressed a different contract. Mutuality of mistake might arise from the fact that the mistake was made by the writer who acted as mutual agent of both parties in reducing the contract to the form of a written agreement. Where there is unilateral mistake, rectification is refused.”

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In this case, Chandanam Ammal executed a sale deed in favour of the plaintiff in respect of the eastern half share in the plaint property. Chandanam Ammal represented her husband Subbiah Asari and Subbiah Asari in the partition got only the western share. Chandanam Ammal could not deal with the eastern half as her husband was entitled only to the western half and what she intended to convey was only the western half; and what the purchaser intended to purchase was the western half belonging to Subbiah. Thus, the parties intended to sell the property belonging to Subbiah and Subbiah owned only the western half. The recital in the document that it is the eastern half, is, therefore, a mistake and this being a mutual mistake, the present suit for rectification of the mistake is maintainable. The original contract between the parties was for the sale of the western half belonging to Subbiah and the contract being clear, it was wrongly expressed in the document as the eastern half. Thus, there being a concluded contract for the sale of Subbiah's share under which the partition between Subbiah and his brother was the western share, the vendor namely Subbiah's wife wrongly mentioned in the sale deed that the property sold is the eastern half share. The conduct of the parties and the subsequent litigation, viz., O.S. 144 of 1962 referred to above leave no room for any doubt as to the property agreed to be sold. The decision in O.S. 144 of 1962 to which the present plaintiff and his vendor are parties, conclusively establish the contract between the parties as to the



property intended to be sold. The decisions cited by the respondent's counsel do not lay down any contrary principle. The respondent's counsel appears to be under a wrong impression that the aforesaid decisions require a further agreement for rectification antecedent to the suit which is not correct. **On the other hand, decisions have gone to the extent of ordering restitution even though the right to secure restitution is barred by limitation.** One such instance is the decision reported in *Tetali Sooramma v. Kovvari Venkayya* [16 Bom. 561.]. **In this case, the concluded contract between the parties being clear a mistake in describing the property sold as eastern half while in fact the contract was for the sale of the western half is certainly maintainable.** In this view, the decision of the lower appellate court ordering restitution is correct and the second appeal fails and is dismissed. There will, however, be no order as to costs. No leave.”

(Emphasis Supplied)

34. This Court further notes that defendant no. 1 passed away on 01st May, 2021. Subsequently, Settlement Agreement dated 24th February, 2025 was executed between the plaintiff and the son of the deceased defendant no. 1, i.e., Mr. Amit Bagga, who was also a witness to the Agreement to Sell. As per the said Settlement Agreement, it has been acknowledged by the legal heir of deceased defendant no. 1 that under the Agreement to Sell, defendant no. 1 had intended to sell the farmhouse in *Revenue Estate of Village Jonapur, Tehsil Mehrauli, New Delhi*, admeasuring 3 Bighas and 12 Biswas out of the entire property, i.e., 4 Bighas and 16 Biswas in *Mustatil No. 60, Khasra No. 20 (2-12); Mustatil No. 61, Khasra Nos. 16/3 min (0-06), 16/1 min (0-13) and 16/2 min (1-05)*, for a total sale consideration of Rs. 4,50,00,000/- (Rupees Four Crores Fifty Lakhs Only). Thus, the legal heir of deceased defendant no. 1 has admitted to the amended suit property as being the correct property description, intended to be sold by defendant no. 1 to the plaintiff.

35. It is to be noted that it is not the case of defendant no. 4 that the



Settlement Agreement was executed fraudulently or by means of coercion. The only objection raised by defendant no. 4 is that the Settlement Agreement is a convenience document, and a result of collusion between the plaintiff and Mr. Amit Bagga. However, at this stage, the Court is concerned with whether an amendment can be allowed to introduce pleadings and prayer with respect to rectification of the Agreement to Sell, and will not go into the question of collusion in the Settlement Agreement. Defendant no. 4 is free to raise such contentions in his written statement, as well as lead evidence with regard thereto, at the time of trial.

36. At this stage, it would also be pertinent to take note of the decision in the case of ***Puran Ram Versus Bhaguram and Another, (2008) 4 SCC 102***, wherein, the Supreme Court has held as follows:

“xxx xxx xxx

*11. Keeping the arguments advanced by the learned counsel for the parties in mind, let us now consider whether the prayer for amendment of the plaint and the agreement, in the facts and circumstances of the case, could be allowed or not. **So far as the prayer for correcting or rectifying the agreement in respect of a part of the description of the suit property is concerned, it would be appropriate to look into the provisions made in Section 26 of the Specific Relief Act, 1963. Chapter 3 of the Specific Relief Act, 1963 specifically deals with rectification of instruments. Section 26 provides as to when an instrument may be rectified and reads as under:***

“26. When instrument may be rectified.—(1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing (not being the articles of association of a company to which the Companies Act, 1956, applies) does not express their real intention, then—

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or



2026:0



DHC:5341

(c) a defendant in any such suit as is referred to in Clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

(2) If, any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed:

Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.”

12. After closely examining the provisions made under Section 26 of the Specific Relief Act, 1963, we do not find any difficulty to hold that in a suit for specific performance of contract for sale, it is permissible to amend a part of the description of the suit property not only in the plaint but also in the agreement. Section 26 clearly says as to when a contract or other instrument can be rectified and provides that when through fraud or a mutual mistake of the parties, the agreement in writing does not express their real intention, it is open to the parties to apply for amendment of the instrument. It provides that when such a situation arises, then

“26. (1)(a) either party or his representative in interest may institute a suit to have the instrument rectified, or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified;”

13. A reading of these two conditions made under Section 26 of the Act would amply show that either party may institute a suit to have the instrument rectified or a party who has already filed a suit in which any right arising under the instrument is in issue may claim in his pleading that the instrument be rectified. So far as the facts of the present case are concerned, it cannot be doubted that the main issue in the suit for specific performance of the contract for sale was relating to the agreement for sale in which a part of the description



2026:0



DHC:5341

of the suit property was wrongly given by mutual mistake and therefore, needed to be amended.

14. Section 26, of course, says that it would be open to a party to institute a suit for correcting the description of the suit property, but the proviso to Section 26 clearly permits that where a party has not claimed any such relief in his pleading, the court shall at any stage of the proceeding allow him to amend the plaint on such terms as may be just for including such claim. From a plain reading of the provisions under Section 26 of the Act, there is no reason why the prayer for amendment of the agreement to correct a part of the description of the suit property from Chak No. 3 SSM to Chak No. 3 SLM, later on converted to Chak No. 3 SWM could not be granted. In our view, it is only a correction or rectification of a part of the description of the suit property, which cannot involve either the question of limitation or the change of nature of suit. In our view, the suit shall remain a suit for specific performance of the contract for sale and a separate independent suit is not needed to be filed when the proviso to Section 26 itself clearly permits either party to correct or rectify the description of the suit property not only in the plaint but also in the agreement itself. So far as the question of limitation is concerned, the agreement was entered into on 12-4-1991 and the suit, admittedly, was filed within the period of limitation. Therefore, even if the amendment of plaint or agreement is allowed, that will relate back to the filing of the suit which was filed within the period of limitation.

15. So far as the submission of the learned counsel for the respondent that the rectification of the agreement cannot be permitted is concerned, we are of the view that Section 26(4) of the Act only says that no relief for rectification of instrument shall be granted unless it is specifically claimed. However, proviso to Section 26, as noted hereinafter, makes it clear that when such relief has not been claimed specifically, the court shall at any stage of the proceeding allow such party to amend the pleading as may be thought fit and proper to include such claim. Therefore, we are not in agreement with the learned counsel for the respondent that Section 26 would stand in the way of allowing the application for amendment of the agreement. The views expressed by us find support in a decision of the Madras High Court in Raipur Mfg. Co. Ltd. v. Joolaganti Venkatasubba Rao Veerasamy & Co. [AIR 1921 Mad 664] wherein it was held that where in the course of a suit for damages for breach of contract, the plaintiff contends that if there is a clerical error in the document embodying the contract, it is not always necessary that a separate suit should have been brought for rectification of the document and it is open to the court in a proper



2026:0



DHC:5341

case to allow the plaintiff to amend the plaint and ask for the necessary rectification.

16. As noted herein earlier, the learned counsel for the respondent contended before us that the appellant could not get specific performance of the contract for sale unless he sued for rectification of the agreement for sale. We are unable to accept this contention of the learned counsel for the respondent for the simple reason that in this case, by filing the application for amendment in the suit for specific performance of the contract for sale, the appellant had sought the rectification of the agreement also. It is sufficient to observe that it was not necessary for the appellant to file a separate suit for that purpose as contended by the learned counsel for the respondent. It is open to the appellant to claim the relief of rectification of the instrument in the instant suit. The amendment, in our view, in the agreement was a formal one and there was no reason why such amendment could not be allowed.

17. The other ground on which the High Court has refused to permit the appellant to amend the plaint is that if the amendment is allowed, the suit shall be converted into a suit for declaration. We are unable to accept this view of the High Court. In our view, the suit is a suit for specific performance of the contract for sale simpliciter and only a part of the description of the suit property in the agreement as well as in the plaint was sought to be corrected or amended by the appellant by filing the application for amendment of the plaint. If we are permitted to look into the description of the suit property from the original plaint as well as from the application for amendment, it would be clear that the description of the suit property has been kept intact excepting that instead of Chak No. 3 SSM, Chak No. 3 SLM, later on converted to Chak No. 3 SWM, has been sought to be replaced. Therefore, it is difficult to conceive that by such amendment, that is, instead of Chak No. 3 SSM, if Chak No. 3 SLM, later on converted to SWM is substituted, either the description of the suit property or the nature of the suit would change. This is only a change in a part of the description of the suit property, which was wrongly described by mutual mistake. Therefore, in our view, this change in a part of the description of the suit property in the plaint cannot convert the suit for specific performance of the contract to a suit for declaration. In any view of the matter, the relief claimed in the suit remained the same i.e. a decree for specific performance of the contract for sale and by amendment, no declaration has been sought for in respect of the instrument.

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2026:0



DHC:5341

19. Before parting with this judgment, we may deal with the submission of the learned counsel for the respondent that the application for amendment could not be allowed inasmuch as the same was barred by limitation. We are unable to accept this contention of the learned counsel for the respondents. In this regard, we may observe that the court may, in its discretion, allow an application for amendment of the plaint even where the relief sought to be added by amendment is allegedly barred by limitation. This view was also expressed by this Court in Pankaja v. Yellappa [(2004) 6 SCC 415]. In that decision, it was held that there is no absolute rule that in such a case, the amendment should not be allowed and the discretion of the court in that regard depends on the facts and circumstances of the case and such discretion has to be exercised on a judicious evaluation thereof. It was further held in that decision that an amendment, which subserves the ultimate cause of justice and avoids further litigation, should be allowed.

20. It is well settled by a catena of decisions of this Court that allowing and rejecting an application for amendment of a plaint is really the discretion of the court and amendment of the plaint also should not be refused on technical grounds. In this connection reliance can be placed on a decision of this Court in Jai Jai Ram Manohar Lal v. National Building Material Supply [(1969) 1 SCC 869: AIR 1969 SC 1267]. In para 8 of the said decision this Court observed that: (SCC p. 873)

“8. Since the name in which the action was instituted was merely a misdescription of the original plaintiff, no question of limitation arises: the plaint must be deemed on amendment to have been instituted in the name of the real plaintiff, on the date on which it was originally instituted.”

A reading of this observation would amply clear the position that no question of limitation shall arise when misdescription of the name of the original plaintiff or misdescription of the suit property arose in a particular case. Apart from that in the present case, although, the relief claimed before as well as after the amendment remained the same i.e. a decree for specific performance of the contract for sale, even then, in the facts and circumstances of the present case, as noted hereinafter, we do not find why the High Court should have interfered with the discretion used by the trial court in allowing the application for amendment of the plaint.

xxx xxx xxx”

(Emphasis Supplied)

37. From a reading of the aforesaid judgment, the following can be culled



out:

- i. Section 26 of the Specific Relief Act provides that it would be open to a party to institute a suit for correcting the description of the suit property.
 - ii. *Proviso* to Section 26 clearly permits that where a party has not claimed any such relief in his pleading, the Court shall, at any stage of the proceedings, allow him to amend the plaint, on such terms as may be just, for including such claim.
 - iii. Thus, even when a relief for rectification of an instrument has not been claimed specifically, the Court shall, at any stage of the proceedings, allow such party to amend the pleading, in the manner thought fit and proper, to include such claim.
 - iv. In a suit for specific performance of contract for sale, it is permissible to amend a part of the description of the suit property not only in the plaint, but also in the agreement.
 - v. A separate independent suit is not needed to be filed when the *Proviso* to Section 26 of Specific Relief Act itself clearly permits either party to correct or rectify the description of the suit property, not only in the plaint, but also in the agreement.
 - vi. Correction or rectification of a part of the description of the suit property would neither involve the question of limitation, nor change the nature of the suit.
 - vii. So far as the question of limitation is concerned, even if the amendment of plaint or agreement is allowed, the same will relate back to the date of filing of the suit, which was filed within the period of limitation.
38. Thus, the contention of defendant no. 4 that the proposed amendment



to change the description of the property in the plaint, and to seek an additional prayer for rectification of the Agreement to Sell, would amount to setting up of a new case *qua* a different property, is meritless. The law permits any party who has not claimed the relief of rectification of the instrument in his pleadings, to amend the pleading to seek such a relief, at any stage of the proceedings. To compel the plaintiff to file a different suit for specific performance with respect to the correct description of the property would defeat the very purpose of the *Proviso* to Section 26 of the Specific Relief Act.

39. The change sought in the property description in the plaint to correct the *Mustatil Nos.* and *Khasra Nos.* so as to reflect the property actually owned by defendant no. 1, would not amount to changing the fundamental nature of the suit, nor amount to filing of a fresh suit for specific performance.

40. The objection of the defendant no. 4 that the prayer for rectification of the Agreement to Sell would change the nature of the suit or is barred by limitation, is also meritless. Rectification of a part of the description of the suit property, does not involve either the question of limitation or any change in the nature of the suit.

41. The suit shall remain a suit for specific performance of the contract for sale, since only a part of the description of the suit property in the plaint is sought to be corrected or amended by the plaintiff, by filing the present application, along with introducing an additional prayer for rectification of the Agreement to Sell. The amendment of the plaint, and also the amendment to the Agreement to Sell, as and when allowed, will relate back to the date of filing of the suit, which was within the period of limitation.



42. Further, no prejudice shall be caused to defendant no. 4 or other defendants, if the plaintiff is allowed to amend the plaint to introduce pleadings with respect to rectification of the Agreement to Sell, and seek a prayer for mandatory injunction for rectification of the Agreement to Sell. At the time of allowing an amendment application, the Court cannot go into the merits of the claim made through amendment in the plaint. The defendants will get a right to controvert the pleadings as amended, by filing an amended written statement and would also have an opportunity to lead evidence regarding the same. Thus, no prejudice would be caused to the defendants, in case the amendment is allowed.

43. Furthermore, the pleadings proposed to be raised by the plaintiff with respect to the mutual mistake made by defendant no. 1 and plaintiff, with regard to the particulars of the property description, cannot be said to change the nature of the dispute. The said pleadings with respect to mutual mistake only seek to explain the circumstances in which the incorrect description of the property was recorded in the Agreement to Sell. The plaintiff has consistently maintained that defendant no. 1 intended to sell the land to the plaintiff under the Agreement to Sell, and that the plaintiff has paid the entire sale consideration of Rs. 4,50,00,000/- (Rupees Four Crores Fifty Lakhs Only) to defendant no. 1. Thereafter, defendant no. 1 refused to honour his contractual obligations, and instead transferred the property to defendant no. 2, necessitating the filing of the present suit. These fundamental facts, which constitute the cause of action in the present suit remain unaffected by the pleadings proposed with respect to misrepresentation. Hence, the contentions of the defendant no. 4 that the plaintiff is seeking to raise a contradictory case or raising a fresh case has to



be rejected.

44. The record before this Court reflects that defendant no. 2 purchased the property in question from defendant no. 1, and also that defendant no. 2 further sold it to defendant no. 3, who in turn, sold it to defendant no. 4. Thus, all claims to the property in question are derived from defendant no. 1.

45. Moreover, it is also reflected from the documents filed by the plaintiff that the defendant no. 1 had acquired 4 *Bighas* and 16 *Biswas* from two different sellers, namely M/s Taurus Buildwell Private Limited and S.S. Nature Home Developers Private Limited, respectively. From the documents on record, it is evident that the property transferred by M/s Taurus Buildwell Private Limited to defendant no. 1, is 1 *Bigha* and 5 *Biswas* in *Mustatil No. 61, Killa No. 16/2 (1-05)*, out of total land measuring 4 *Bighas* and 16 *Biswas*, comprised in *Mustatil No. 61, Killa Nos. 16/2 (1-05) and 17/1 (3-11)*, situated in the *Revenue Estate of Village Jonapur, Tehsil Mehrauli, New Delhi*.

46. It is also to be noted that the documents on record also reflect that the property transferred by S.S. Nature Home Developers Private Limited to defendant no. 1, is 3 *Bighas* and 11 *Biswas* in *Mustatil No. 61, Khasra Nos. 16/3 min (0-6), 16/1 min (0-13) and Mustatil No. 60, Khasra No. 20 (2-12)*, out of the total land being 6 *Bighas* and 2 *Biswas* in *Mustatil No. 60, Khasra No. 20 (2-12) and Mustatil No. 61, Khasra Nos. 16/1 (0-13) and 16/3 (2-17)*, situated in the *Revenue Estate of Village Jonapur, Tehsil Mehrauli, New Delhi*.

47. Thus, the plaintiff can be allowed to raise the plea that the Agreement to Sell dated 05th January, 2016, as it exists, does not truly represent the intention of the parties, which was that the defendant no. 1 intended to sell 3



Bighas and 12 Biswas, out of the land measuring 4 Bighas and 16 Biswas in Mustatil No. 60, Khasra No. 20 (2-12); Mustatil No. 61, Khasra Nos. 16/3 min (0-06), 16/1 min (0-13) and 16/2 (1-05), situated in Revenue Estate of Village Jonapur, Tehsil Mehrauli, New Delhi, and not 3 Bighas and 12 Biswas, out of the land measuring 4 Bighas and 16 Biswas in Mustatil No. 61, Killa Nos. 16/2 (1-05) and 17/1 (3-11), situated in Revenue Estate of Village Jonapur, Tehsil Mehrauli, New Delhi.

48. Accordingly, the amendments sought by the plaintiff regarding the plea of description of the property in question, are entitled to be allowed.

49. Consequently, considering the discussion as hereinabove, this Court finds no impediment in permitting the plaintiff to amend his pleadings regarding the amended suit property and seek relief of rectification of the property description in the Agreement to Sell, even though the plaintiff had not claimed any such relief in the original plaint.

50. The other amendments sought by the plaintiff pertain to subsequent events, in respect of subsequent sale deeds between defendant nos. 2 and 3, and defendant nos. 3 and 4, as well as the prayers sought with regard thereto. As noted hereinabove, defendant no. 4 does not object to the said amendments, with defendant nos. 2 and 3 adopting the submissions of defendant no. 4. The said amendments are accordingly allowed.

51. It is to be noted that the above amendments as allowed by this Court, are essential for the complete adjudication of disputes between the parties. This Court is of the opinion that the aforesaid amendments are necessary for the purpose of determining the real questions in controversy between the parties. As noted hereinabove, trial in the present case has not yet commenced and the same is at the initial stage, therefore, no prejudice shall



be caused to the defendants, if the present application is allowed.

52. Furthermore, the amendments are also based on subsequent events, which are necessary to be incorporated in the plaint in order to avoid multiplicity of proceedings. The amendments as allowed by this Court do not change the nature of the suit in any manner.

53. As regards the alternative relief sought by the plaintiff for refund of the amount paid by the plaintiff to defendant no. 1, the same was not pressed during the course of arguments, and was withdrawn. Therefore, the amendment in the prayer for alternative relief *qua* refund of amount of Rs. 4,50,00,000/- (Rupees Four Crores Fifty Lakhs Only) to the plaintiff, is rejected.

54. The present application is allowed in terms of the aforesaid. However, considering the facts and circumstances of the present case, this Court deems it appropriate to impose cost on the plaintiff. Accordingly, the plaintiff is directed to deposit a sum of Rs. 50,000/-, as costs with the following:

D.H.C.B.A. COSTS ACCOUNT

S.B. A/c. No. 15530110179338

Bank Name: UCO Bank

Branch Address: Delhi High Court

IFSC: UCBA0001553

55. The present application is disposed of in the aforesaid terms.

CS(OS) 320/2018

56. Since the applications, i.e., *I.A. 2697/2026* and *I.A. 39889/2024* have been disposed of *vide* today's order, the plaintiff is directed to file the amended plaint, along with the additional document taken on record, i.e., the Settlement Agreement dated 24th February, 2025, within a period of two



weeks.

57. Accordingly, the defendants are granted opportunity to file written statement(s) to the amended plaint within the statutory period, after receipt of the amended plaint along with additional document. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the plaintiff's document, without which, the written statement(s) shall not be taken on record.

58. Liberty is granted to the plaintiff to file replication within thirty days, from the date of receipt of the written statement(s). Further, along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of documents of the defendants, be filed by the plaintiff, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given with the timelines.

59. List before the Joint Registrar (Judicial) for completion of pleadings on 24th July, 2026.

60. List before Court on 18th August, 2026.

**MINI PUSHKARNA
(JUDGE)**

JULY 03, 2026

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