

**-IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CMPMO No.362/2019****Date of Decision: 26<sup>th</sup> November, 2025.**

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Bhadri Devi .....Petitioner

Versus

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Sher Singh. ...Respondent

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Coram***The Hon'ble Mr. Justice Bipin Chander Negi, Judge.******Whether approved for reporting?<sup>1</sup>***

For the Petitioner: Mr. Aman Parth Sharma, Advocate.

For the Respondent: Mr. Sanjeev Kuthiala, Sr. Advocate with  
Mr. Abhishek, Advocate.

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***Bipin Chander Negi, Judge (oral).***

The present petition has been preferred against the impugned order dated 04.06.2019, whereby an application filed under Order 6 Rule 17 CPC filed by the present petitioner/plaintiff before the learned trial Court has been dismissed.

**2.** Heard counsel for the parties, perused the impugned order and the records appended along with the petition.

**3.** The present petitioner/plaintiff in the case at hand had filed a suit for declaration and for permanent prohibitory injunction to the effect that the Will dated 16.11.2000, be declared null and void. In the written statement filed, an objection qua maintainability of the suit has been raised as a preliminary objection. Substantiation qua the same has been given in para 4 of the written



statement on merits, wherein it has been categorically averred that no consequential relief for possession has been claimed.

**4.** In the aforesaid backdrop, an application for amendment was filed seeking incorporation of the plea of possession in the prayer clause in the following terms:-

*"2. That this amendment by addition in 7<sup>th</sup> line of prayer para after the word 16-11-2000 "the possession of the suit land be delivered to the plaintiff to the extent of his share and revenue record be ordered to be corrected as a consequential relief."*

**5.** The said amendment was allowed. Feeling aggrieved by allowing of such amendment, an appropriate petition under Article 227 bearing CMPMO No.254 of 2017 was filed before the Coordinate Bench of this Court. The same was decided vide judgment dated 19.12.2018. The petition so filed was allowed.

**6.** While allowing the petition, the Coordinate Bench of this Court was of the view that on account of incorporation of the plea of possession, suitable amendments were required to be made with respect to the valuation of the suit for the purpose of jurisdiction and Court fees and since the same had not been made, therefore, the petition was allowed and the impugned order was set aside.



**7.** However, in order to obviate multiplicity of litigation, on account of the present petitioner/plaintiff, filing a successive suit with respect to possession, the present petitioner/plaintiff was directed to reinstitute an application under the provisions of Order 6 Rule 17 CPC incorporating therein the relief clause with respect to possession and the necessary incorporations in the suit with respect to the valuation of suit for the purpose of jurisdiction and court fees on account of the relief of possession.

**8.** In pursuance to the aforesaid, an appropriate application for amendment under Order 6 Rule 17 CPC was preferred by the petitioner/plaintiff and reply thereto was filed. On a consideration of the pleadings, the trial Court was of the view that since necessary incorporations in terms of the judgment of the Coordinate Bench in CMPMO No.254 of 2017 decided on 19.12.2018, had not been made, therefore, the amendment was disallowed.

**9.** The learned trial Court has completely glossed over the application filed seeking amendment. In my considered view, the same is strictly in consonance with the judgment of the Coordinate Bench of this Court passed in CMPMO No.254 of 2017 decided on 19.12.2018. The application filed seeking amendment in pursuance to the



judgment of the High Court, incorporates the relief of possession in the prayer clause and besides the same, seeks amendment by incorporating suitable amendments in the suit pertaining to violation of suit for the purpose of jurisdiction and Court fees.

**10.** The trial Court has completely ignored the observations made by the Coordinate Bench of this Court in CPM No.254 of 2017, wherein it has been categorically observed that the amendment is being permitted to obviate multiplicity of litigation on account of the possibility of the present petitioner/plaintiff being pushed to filing a successive suit seeking relief of possession. In this respect, it would be appropriate to refer to the judgment of the Apex Court ***in SLP(C) No.30324 of 2019, Dinesh Goyal @ Pappu Vs. Suman Agarwal (Bindal) and Ors.***

The relevant extract is reproduced herein below:-

*11.2 Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17. Recently, this Court in Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr.<sup>7</sup>, after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles:-*

*(i) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or*



*prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.*

*(ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.*

*(iii) Amendments, while generally should be allowed, the same should be disallowed if –*

*(a) By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.*

*(b) The amendment does not raise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)*

*(c) The amendment completely changes the nature of the suit;*

*(d) The prayer for amendment is mala fide,*

*(e) By the amendment, the other side should not lose a valid defence.*

*(iv) Some general principles to be kept in mind are –*

*(I) The court should avoid a hyper-technical approach; ordinarily be liberal, especially when*



*the opposite party can be compensated by costs.*

*(II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new approach.*

*(III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint.*

**11.** Besides the aforesaid, the learned counsel appearing on behalf of the petitioner/plaintiff submits that on account of the amendment so sought, no evidence is required to be led. It is pointed out that when the application under Order 6 Rule 17 CPC has been filed, the matter has been listed for final arguments. In view thereof, the impugned order dated 04.06.2019, passed by the learned Civil Judge Joginder Nagar, District Mandi, HP in CS No.40 of 2010, titled Bhadri Devi Vs. Sher Singh is quashed and set aside the amendment application is allowed, amended plaint be taken on record. Parties are directed to appear before the learned trial Court on **15.12.2025**. On putting in appearance, in view of the aforesaid submission made by the counsel for the petitioner/plaintiff hereinabove, the matter shall be posted



for final arguments. The case be decided at its earliest, subject to the convenience of the learned trial Court.

**12.** In view of above terms, the present petition stands disposed of, so also the pending miscellaneous application(s), if any.

**(Bipin Chander Negi)**  
**Judge**

26<sup>th</sup> November, 2025  
(Gaurav Rawat)