



OD-3

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

**APOT/94/2026
WITH CS/166/2024
IA NO: GA/1/2026**

**ISHWAR CHAND GUPTA
VS
ASHOK KUMAR GUPTA AND ORS**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Sagar Bandyopadhyay, Sr. Adv.
Mr. Saumyen Datta, Adv.
Mr. Tapas Singha Roy, Adv.

For Respondent no. 1 : Mr. Nirmalya Dasgupta, Adv.
Mr. R. L. Mitra, Adv.
Ms. Priyanka Dhar, Adv.

For Respondent no. 3 : Mr. Mukesh Kr. Gupta, Adv.

HEARD ON : 12.06.2026

DELIVERED ON : 12.06.2026

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the defendant no. 1 in a suit for partition and accounts.
2. Appeal is directed against the order dated February 23, 2026 passed in GA/2/2024.



3. By the impugned order, learned Trial Judge, partially allowed an application for amendment filed at the behest of the plaintiff to the suit.
4. Learned Senior Advocate appearing for the appellant submits that, the amendments that were allowed by the learned Trial Judge, alter the nature and character of the suit. The amendments allowed are barred by limitation.
5. Learned Senior Advocate appearing for the appellant relies upon **2008 (14) SCC 364 (Rajkumar Gurawara Vs. S.K. Sarwagi and Company Private Limited)** to contend that, none of the ingredients necessary to be established for the purpose of allowing an application for amendment existed or were established before the learned Trial Judge. Consequently, the learned Trial Judge erred in partially allowing the application for amendment.
6. Plaintiff and the respondent no. 3 are represented.
7. We find from the records that, the plaintiff filed a suit for partition and accounts. The suit is of 2024. The plaintiff applied for amendment of the plaint in 2024 itself by way of GA/2/2024.
8. By the impugned order, learned Trial Judge, partially allowed the application for amendment. Plaintiff proposed various paragraphs to be introduced to the plaint by way of an amendment. Learned Trial Judge allowed paragraphs 19N to 19GG of the proposed amendments to be introduced as paragraph 19A and thereafter the remaining paragraphs to be numbered serially. Learned Trial Judge allowed paragraphs 46A, 49A, 49B and 49C. Learned Trial



Judge also allowed the proposed prayers to be introduced to the plaint by way of amendment.

- 9. Rajkumar Gurawara (Supra)** is of the following view, on the issue of amendment to the pleadings:

“18. Further, it is relevant to point out that in the original suit, the plaintiff prayed for declaration of his exclusive right to do mining operations and to use and sell the suit schedule property and in the petition filed during the course of the arguments, he prayed for recovery of possession and damages from the second defendant. It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation. The plaintiff not only failed to satisfy the conditions prescribed in proviso to Order 6 Rule 17 but even on merits his claim is liable to be rejected. All these relevant aspects have been duly considered by the High Court and rightly set aside the order dated 10-3-2004 of the Additional District Judge.”

- 10.** Amendment to the plaint is to be considered in the light as to whether or not the proposed amendment changes the nature and character of the suit or would result in introducing a new cause of action or would prejudice the other party or would defeat the law of limitation.
- 11.** So far as the limitation is concerned, it is a mixed question of fact and law. It is the contention of the appellant before us that, the



amendments of the plaint at least insofar as the prayers are concerned, would mean that, the issue of limitation is given a go bye inasmuch as, the plaintiff is now seeking relief in relation to businesses from the year 2008 in a suit for 2024.

- 12.** As noted above, limitation is a mixed question of fact and law. At this stage, we are not in a position to arrive at a conclusive finding that the claim made by the plaintiff is barred by limitation so far as the accounts for the businesses are concerned. The issue of limitation is kept open to be decided at the trial of the suit.
- 13.** So far as change in the nature and character of the suit is concerned, we find from the records that, the suit was for partition and accounts. The proposed amendments which are allowed by the learned Trial Judge, do not change the nature and character of the suit.
- 14.** So far as prejudice to the defendants as well as the introduction of new cause of action is concerned, on the parity of the reasoning as noted above, we are of the view that, none of the defendants is prejudiced inasmuch, the defendants are afforded an opportunity to file additional written statement. No new cause of action stands introduced since, the nature and character of the suit itself is not changed by the amendments allowed.
- 15.** Learned Senior Advocate appearing for the appellant, at this stage, seeks extension of time to file additional written statement for a period of fortnight from date. Prayer being reasonable is allowed.



All defendants to the suit, are permitted to file additional written statement within a fortnight from date, if not already filed.

16. APOT/94/2026 along with connected application are disposed of, without any order as to costs.

(DEBANGSU BASAK, J.)

17. I agree.

(MD. SHABBAR RASHIDI, J.)