HIGH COURT OF CALCUTTA

Bench: Hon'ble Justice Shampa Sarkar

Date of Decision: 13th May 2024

Case Number: C.O. No. 508 of 2024

Sri Swarna Kamal Jana …PETITIONER

VS.

Sri Tapan Kumar Maity …RESPONDENT

Legislation and Rules Invoked:

Section 26-F of the Bengal Tenancy Act, 1885

Sections 8, 9, and 14-M of the West Bengal Land Reforms Act, 1955

Code of Civil Procedure, 1908

Subject: The petition involves a dispute over the rejection of an amendment to a pre-emption application under the West Bengal Land Reforms Act, 1955, which the petitioner argued was necessary to address questions concerning the title and correct share of the land to be preempted.

Headnotes:

Pre-emption Proceedings and Title Disputes – Rejection of an amendment to a pre-emption application that sought to introduce questions about the title and share entitlement over land sold – Original application filed under Section 8 of the West Bengal Land Reforms Act based on non-notification of sale to a co-sharer and a misstated sale price – Amendment aimed to challenge the vendor's title to sell the full extent of the land – High Court held that such issues exceed the scope of Section 8 and must be addressed in a separate title suit – Pre-emption is viewed as a statutory right with specific constraints, and is not intended to resolve title disputes – Amendment rejected as it sought to convert the nature of the proceedings from pre-emption to a title and partition suit [Paras 1-37].

Judicial Interpretation of Statutory Rights in Pre-emption – Application of the Code of Civil Procedure to pre-emption applications does not extend the jurisdiction of a Civil Judge (Junior Division) to include resolution of title disputes inherently within such cases – The court emphasized the limited and specific jurisdiction under the West Bengal Land Reforms Act for deciding pre-emption applications without delving into broader title issues unless they relate directly to establishing pre-emptive rights [Paras 14, 20, 25, 26].

Referred Cases:

- Minor Subir Ranjan Mondal vs. Sita Nath Mukherjee, AIR 1994 Cal 166
- Uttaranchal Road Transport Corpn. V. Mansaram Nainwal, (2006) 6 SCC 366
- Barasat Eye Hospital and ors. Vs. Kaustabh Mondal, (2019) 19 SCC 767
- Raghunath (Dead) by LRS v. Radha Mohan (Dead) by LRS and Ors., (2021) 12 SCC 501
- Life Insurance Corporation vs. Sanjib Builders Pvt. Ltd. And anr., 2022 8 SCR 1121
- Revajeetu Builders and Developers vs. Narayanaswamy and Sons and ors., (2009) 10 SCC 84

Representing Advocates:

For the Petitioner: Mr. Asish Chandra Bagchi, Sr. Advocate, Mr. Malyasree Maity

For the Opposite Party: Mr. Gopal Chandra Ghosh

<u>Shampa Sarkar, J.:-</u>

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1. The revisional application arises out of an order dated January 18, 2024, passed by the learned Civil Judge, (Junior Division), Haldia, Purba Medinipur, in J. Misc. (Preemption) Case No.24 of 2020.

2. By the order impugned, the learned court rejected an application for amendment of the pre-emption application on the ground that such amendment would change the nature and character of the proceeding. The court was only deciding a pre-emption case and could not decide title. By the amendment, the petitioner was introducing a controversy with regard to the title of the vendor, in respect of the property sold to the opposite party/pre-emptee.

3. Mr. Asish Chandra Bagchi, learned Advocate appearing on behalf of the pre-emptor/petitioner submitted that an application for pre-emption was nothing but a suit. The civil court adjudicating the pre-emption case was the Civil Judge (Junior Division), Haldia, Purba Medinipur. Thus, the question of title could also be decided in the pre-emption proceeding by the said judge who also had the jurisdiction to decide a title suit.

4. Reliance was placed on the decision of Minor Subir Ranjan Mondal vs. Sita Nath Mukherjee, reported in AIR 1994 Cal 166,

5. Mr. Bagchi relied on a decision reported in 51 CWN 415, Hossain Ali and anr. vs. Kala Chand Ghose (Gope) and ors. to substantiate that the Calcutta High Court had held that under Section 26-F of the Bengal Tenancy Act (VIII of 1885), the question of title could be gone into. The very language of Section 26-F would indicate that while the court could decline to go into the complicated questions of title in the proceedings under Section 26-F of the Bengal Tenancy Act, it had the jurisdiction to decide the title. The court was not bound to relegate the parties to a title suit in every case. 6. It was further contended that the amendment should not have been rejected at the initial stage, as the merits of the amendment would be decided at the trial. Whether the facts incorporated by way of an amendment were true and correct would be decided at the final adjudication.

7. Mr. Gopal Chandra Ghosh, learned Advocate appearing on behalf of the opposite party/preemptee submitted that the petitioner initiated the proceeding under Section 8 of the West Bengal Land Reforms Act, 1955. The said proceeding was initiated on the ground of vicinage and co-sharership.
The preemptor, under the said provisions, was permitted to claim transfer of the land sold to the pre-emptee on the ground that he had a preferential right either on account of being a co-sharer of the plot sold or a contiguous owner of the plot sold.

8. In the application for preemption, it had been pleaded that although the petitioner was a co-sharer of the suit land, the vendor of the opposite party, did not notify the petitioner about the sale. As a non-notified cosharer, the petitioner filed the preemption application. The opposite party/preemptee was a complete stranger to the plot and an unprotected transferee. The property had not been partitioned by metes and bounds, in terms of the provisions of the West Bengal Land Reforms Act, 1955. The preemptor further stated that although the sale deed reflected an inflated price of Rs.3,50,000/- as consideration money paid by the opposite party, in reality only Rs.2,00,000/- had been paid. The preemptor had a right to claim refund of the excess money which was deposited. If the preemption application was decreed, the total property of the preemptor would not exceed the ceiling limit as provided under Section 14-M of the Land Reforms Act, 1955.

9. By the amendment, the petitioner sought to introduce certain facts relating to the competence of the vendor to sell the property. It was stated that the vendor of the opposite party could not have sold more than 6.75 decimals out of 13.75 decimals, as he did not have right, title and interest over the remaining portion sold. The consideration amount which was actually paid by the opposite party was Rs.1 lakh instead of Rs.2 lakhs.

10. The family tree of Bhagirath Jana, i.e., the original owner of the land was also sought to be introduced in order to demonstrate that the vendor of the opposite party could not have sold the entire 13.05 decimals of land as he had title over only 6.75 decimals. According the preemptor/petitioner, the entire plot measured around 27 decimals and there were many other cosharers.

11. The issue involved in this revisional application is whether the amendment sought to be introduced, would be necessary for proper adjudication of the dispute between the parties. Section 8 of the said Act gives a right of preemption to a bargadar or a co-sharer or a contiguous raiyat. It provides that if a portion or a share of a plot of land of a raiyat is transferred to any person other than the co-sharer of a raiyat in the plot of land, the bargadar may within three months of the date of transfer or the co-sharer of a raiyat in the plot may within three months of service of notice given under sub-Section (5) of Section 5, or any raiyat possessing land adjoining to such plot of land may within four months of the date of such transfer, apply to the Munsif having territorial jurisdiction for transfer of the said portion or share of the plot of land to him, subject to the limit mentioned in Section 14-M of the

said Act, on deposit of the consideration money together with 10% of that amount.

12. Thus, a bare reading of section would indicate that the statute gave a right to the petitioner, who claims to be a non-notified co-sharer and also a contiguous owner, to seek transfer of the portion sold to the opposite party/preemptor in his favour. If the preemption application was allowed in favour of the preemptor, he would be substituted in place of the opposite party/preemptee.

13. There would be mere substitution of the petitioner in place of the preemptee and the land sold would become the property of the petitioner. The Munsif functions as a court of special jurisdiction under the said Act.

The Munsif has now been designated as a Civil Judge (Junior Division). The Civil Judge, (Junior Division) having territorial jurisdiction, would be the competent court to entertain a preemption application, even if the consideration money of such transfer exceeded the pecuniary jurisdiction of the Civil Judge (Junior Division).

14. The provisions of the Code of Civil Procedure would apply as to the procedure to be followed by the Munsif (Civil Judge) while adjudicating the preemption application, but that does not necessarily mean that the Munsif who is now designated as Civil Judge (Junior Division) can adjudicate a title dispute as to whether the vendor of the opposite party had title over the 13.5 decimals of land which was sold to the opposite party/preemptee or not. Such issue is beyond the scope of Section 8 and 9 of the said Act.

15. The contention of Mr. Bagchi that as the decision in Minor Subir Ranjan Mandal (supra) had clearly laid down that the preemption application was the suit, the civil court could also adjudicate whether the vendor of the opposite party had the right to sell the entire 13.5 decimals to the opposite party, is not accepted. The question which fell for decision in Minor Subir Ranjan Mandal (supra) was whether Section 5 of the Limitation Act would apply to an application under Section 8 of the Land Reforms Act. The court held that the intention of the legislature was not to apply Section 5 of the Limitation Act to Section 8 of the said Act. The period of limitation had been prescribed within the section itself, which was different for each category of persons who could exercise the right of preemption i.e., bargadar, co-sharer and adjoining owner.

16. While deciding this issue, the court observed that the right conferred under Section 8 of the Act was a statutory right and had to be exercised strictly in accordance with the provisions of Section 8 of the said Act.

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17. While deciding the point of applicability of Section 5 of the Limitation Act, the court observed that the application for preemption was in the nature of a plaint. Therefore, the same would not come within the ambit of Section 5 of the Limitation Act. Although the section contemplates lodging of an application for preemption, it was in the nature of an original proceeding. Such being the position, there was little difference between an application for preemption instituted before a Munsif and a plaint. The original claim of preemption was required by law to be filed in the form of an application before the Munsif and the Munsif had the trappings of a court, although he was functioning as per statute. The ratio in the said decision was not that the Munsif could try all kinds of civil disputes with regard to title, partition and shares of the parties, while adjudicating a preemption application. The decision was rendered on a question as to whether a pre-emption application could be filed belatedly and the delay could be condoned by applying Section 5 of the Limitation Act. The court observed that Section 8 contemplated filing of an application for initiation of a proceeding. The application was in the nature of a plaint and the proceeding being an original one, was in the nature of a suit. The period for limitation had been in-built for each category of persons, who had a right of pre-emption. Thus, further application of Section 5 should not be permitted in such an original proceeding.

18. Mr. Bagchi's submission that as per the decision in Minor Subir Ranjan Mondal (supra), the Munsif now designated as Civil Judge and he could decide also the question of title in the preemption case as the proceeding is a suit is far fetched. The Munsif is a statutory tribunal under the said section. The Munsif had been designated as Civil Judge, but the powers and functions are confined to the provisions of Section 8. The Court could only decide whether the petitioner had a right of preemption/transfer of the property sold to the opposite party either as a non-notified co-sharer or as a contiguous owner.

19. Pecuniary jurisdiction of the Civil Court does not exceed beyond Rs.60,000/-. Whereas, in case of pre-emption, even if the consideration money was paid beyond the pecuniary jurisdiction of the Civil Judge (Junior Division), the said Civil Judge could adjudicate a preemption application, irrespective of the valuation of the property sold.

20. The Civil Judge (Junior Division), does not function like the principal civil court which has the right to adjudicate all issues, including issues of title, shares of the parties etc. The adjudicatory process is limited to the issue as provided in the section itself. The Judge has the trappings of a civil court and

may employ the procedural law as provided under the Civil Procedure Code. That does not necessarily make the Civil Judge (Junior Division) who is in seisin of a pre-emption application, a civil court for all purposes, clothing the court with the jurisdiction to decide the questions of title/partition and other related issues.

21. A decision is an authority for what it decides all observations or what logically follows from such observations, cannot be treated as a binding precedent.

22. Reference is made to the decision of Uttaranchal Road Transport Corpn. v. Mansaram Nainwal, reported in (2006) 6 SCC 366, the Hon'ble Apex Court held as follows:-

"13. The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on an earlier decision of the Court held that reinstatement was mandated. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a judge while giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates : (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See State of Orissa v. Sudhansu Sekhar Misra [(1968) 2 SCR 154 : AIR 1968 SC 647] and Union of India v. Dhanwanti Devi [(1996) 6 SCC 44] .) A case is a precedent and binding for what it explicitly decides and no more. The words used by judges in their judgments are not to be read as if they are words in an Act of Parliament. In Quinn v. Leathem [1901 AC 495 : (1900-03) All ER Rep 1 : 85 LT 289 (HL)] , Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended

to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides."

23. Also, the decision of Sk. Hossain Ali (supra) does not decide the issue that the question of title could be gone into by a court while deciding an application for preemption. Rather, it had been held that if complicated questions of title were involved, the court could be well advised to relegate the parties to a regular title suit for the adjudication of the question. The decision was rendered while deciding an objection raised to the effect that the preemptor did not fulfil the status of a co-sharer tenant. The court held that for the limited purpose of ascertaining co-sharership or contiguous ownership or whether the transfer was a sale or usufructuary mortgage, the question of title may be looked into. The decision of Sk. Hossain Ali (supra) is quoted below :-

"Looking in at the section as a whole, it is impossible to maintain that all questions of title are necessarily excluded from the purview of the Court. The right of pre-emption does he not exist in the case of every kind of transfer of a portion or share of an occupancy holding. There of which are certain exceptions are expressly specified in several clauses of sub-sec. (I) of the section, - Among those, cl. (a) obviously involves questions of title. This clause provides that pre-emption would not lie in the case e of a transfer to a person who is already a of co-sharer in the tenancy by virtue of an interest which has accrued to him other than by the transfer in respect of which pre-emption is claimed. In other words, it is open to a person to defeat an application for pre-emption by showing that he already acquired an interest in a portion or share of the holding in dispute, in other words, by proving title to a share or portion acquired otherwise than by the transfer on the basis of which the application for pre-emption is made. Then again, sub-sec. (II) also shows that the Court may have to go into the question whether the transfer on the strength of which pre-emption is claimed is such a transfer as is contemplated by the section, or is a simple or usufructuary mortgage or mortgage by conditional sale in respect of which no decree or order absolute or for foreclosure has yet been made. It is further to be observed that the right of pre-emption conferred by sec. 26F arises only if certain fundamental conditions are satisfied, apart from the formalities or deposits prescribed by the section. The right is a right given to "one or more co-sharer tenants of the holding," and it arises only if a portion or share of the holding is transferred to

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a person other than a co-sharer. If, therefore, upon an application for pre-emption, an objection is raised that the Petitioners do not fulfil the status of co-sharer tenants, the Court cannot very well decline to go into the question. The objection in the present case amounted to an objection of that kind. It was, in effect, tantamount to saying that the title to the entire holding having previously passed to Opposite Party No. 1 under Exts. A2 and A3, the Petitioners who claimed to be co-sharer tenants were not co-sharer tenants at all, because if the entire holding had already passed to Opposite Party No. 1 there could not be any question of any co-sharer being left who would be competent to apply for pre-emption. Then, again, the Court on an application s under sec. 26F should certainly be competent to go into the question as to whether the person in whose favour the transfer had been made was a co-sharer tenant already otherwise than by such transfer.

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…As regards the cases relied on by Mr. Bhagirath Chandra Das, it is sufficient to say that no hard and fast It rule can be laid down. It will all depend on the nature of the question which is raised between the parties. It may be that if it involved complicated questions of title, o the Court would be well advised in relegating the parties to a regular title suit for the adjudication of such questions, but if it was only a question of the maintainability of the application which could be easily disposed of in the proceeding under sec. 26A, there is no reason why the Court should decline jurisdiction. By way of illustration, reference may be made to the judgment of Edgley, J., in the case of Basanta Kumar Churnakar v. Durganath Pal (4), where the question whether a transaction which, on the face of it, purported to be a deed of sale had really been intended to be a mortgage and not a deed of sale, was gone into in a proceeding for pre-emption. On those grounds I must overrule the first point raised on behalf of the Petitioners."

24. Thus, the contentions of Mr. Bagchi that the said decision is also an authority on the point that the question of title could be gone into while deciding an application for preemption stands, negated. There is no quarrel with the proposition that the title of the parties to the extent of proof of cosharership or contiguous ownership can be looked into. The right and title of the parties to determine whether the preemptor and the vendor were cosharers in respect of the suit plot or the preemptor was a contiguous owner

or whether the property was sold to a co-sharer, or not, had to be determined in the preemption application and while deciding such issue the title could be gone into. In the case in hand, the amendment would require determination as to whether the vendor of the opposite party i.e. the cosharer of the petitioner had the title beyond 6.75 decimals in the undivided property or not. Whether sale of 13.5 decimals was beyond his share in the property and consequently whether any title had passed in favour of the opposite party in respect of the entire 13.5 decimals of land sold, were sought to be urged by the amendment.

25. In my opinion, such question could not be gone into by the Civil Judge (Junior Division), who is functioning as a statutory tribunal under the provisions of West Bengal Land Reforms Act.

26. The contention of Mr. Bagchi that the amendment would also be necessary in order to facilitate the enquiry as contemplated in Section 9, is not credible. Section 9 contemplates that the court may make an enquiry to decide whether the consideration money mentioned in the deed of sale was inflated or not and if it was found that the same was inflated, the excess money deposited at the time of filing of the preemption application would be refunded to the preemptor. For the purpose of such enquiry, the extent of title of the co-sharer over the property sold was not required to be looked into at all. The argument that if it was found that the transferee did not have the right to sell the entire 13.5 decimals, the court would decide the extent of title and refund to the preemptor the proportionate amount corresponding to the area over which the co-sharer/vendor did not have title, is an absurd interpretation of the said section. If the preemptor has any objection with regard to the quantum of property sold on the ground that the vendor of the preemptee did not have right, title and interest on a portion thereof, the remedy of the petitioner would be to approach the civil court seeking other reliefs.

27. In Barasat Eye Hospital and ors. vs. Kaustabh Mondal reported in (2019) 19 SCC 767, the Hon'ble Apex Court traced the history of the law relating to pre-emption, in general and its scope in relation to West Bengal. It was observed that the right of pre-emption had its origin in the Mohammedan rule, based on customs which came to be accepted in various courts, primarily located in the north of India. The law was largely absent in the south of India. The law came to be incorporated in various statutes, both, prior to coming into force of the Constitution of India and even thereafter. The constitutional validity of such laws of pre-emption came to be debated before the Constitutional Bench of the Hon'ble Supreme Court in Bhau Ram v. Baij

Nath Singh reported in AIR 1962 SC 1476. Even though there were views expressed that the right of pre-emption was opposed to the principles of justice, equity and good conscience, it was felt that the reasonableness of those statutes had to be appreciated in the context of a society where there were certain privileged classes holding land and, thus, there could be some utility in preventing a stranger from acquiring property in an area which had been populated by a particular fraternity or class of people. This aspect was sought to be balanced with the constitutional scheme, prohibiting discrimination against citizens on the grounds of religion, race, caste, sex, place of birth or any of them, under Article 15 of the Constitution.

28. With the passage of time, such laws of pre-emption, which existed in many states were abrogated, and it was only within a limited jurisdiction that the said law prevailed.

29. One such enactment still in existence is the West Bengal Land Reforms Act, 1955. The Apex Court held that it was the said enactment with which the court was concerned and the very right of pre-emption and the manner of its application under the said Act was debated before the Court in the said case. The definitions of raiyat and bargadar which were relevant for the interpretation of the law were set out, considered and discussed. The provisions of Sections 8 and 9 were also set out, considered and discussed. In paragraph 10 of the said judgment the decision of the Hon'ble Apex Court in Bishan Singh vs. Khazan Singh, repoted in AIR 1958 SC 838, a four Judges Bench was relied upon. It was opined that a preemptor had two rights, first, the inherent or primary right, i.e., right for the offer of a thing about to be sold, and second, the secondary or remedial right to follow the thing sold. The secondary right of pre- emption was simply a right of substitution, in place of the original vendee and the pre-emptor was bound to show not only that he had the right as good as the of that vendee, but superior to that of the vendee. The superior right had to subsist at the time when the pre-emptor exercised the right. The relevant portion of the said decision in Bishan Singh (Supra) was quoted and accepted by the Hon'ble Apex Court. From the elucidation of the legal position with regard to the right of pre-emption, the Apex Court held that the right of pre-emption was "a very weak right". That being the character of the right, any provision to enforce such a right was, to, be strictly construed. Thus, the scope of an application for pre-emption was with regard to adjudication of primary and secondary right as discussed in Barasat (supra).

30. The right of the petitioner to preempt the transfer is by substituting himself in place of the transferee, nothing more nothing less.

31. In the matter of Raghunath (Dead) by LRS v. Radha Mohan (Dead) by LRS and Ors., reported in (2021) 12 SCC 501, the Hon'ble Apex Court again reiterated the scope of the right of preemptor.

"11. In view of the aforesaid elucidation, it was opined that the preemptor has two rights : first, the inherent or primary right i.e. right for the offer of a thing about to be sold; and second, the secondary or remedial right to follow the thing sold. The secondary right of preemption is simply a right of substitution, in place of an original vendee and the pre-emptor is bound to show not only that his right is as good as that of that vendee, but that it is superior to that of the vendee. Such superior right has to subsist at the time when the preemptor exercises his right. The position is thereafter summarised in the following terms : (Bishan Singh case [Bishan Singh v. Khazan Singh, AIR 1958 SC 838] , AIR p. 841, para 11)

'11. … (1) The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase i.e. the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place."

32. Amendment could not be claimed as a matter of right under all circumstances. Though normally, amendments are allowed in order to avoid multiplicity of litigation, the court needs to take into consideration whether the application had been made bona fide or mala fide and also whether the amendment would cause prejudice to the other side. The amendment was rightly rejected. The amendment incorporated was beyond the scope of the proceeding. It was mala fide, vexations and wholly irrelevant for adjudication of the pre-emption case. The preemptor sought to convert the pre-emption case to a suit for declaration of title and partition. The amendment changed the nature of the suit as the preemptor wanted the court to decide the share and title of the seller and also other co-sharers.

33. In the decision of Life Insurance Corporation vs. Sanjib Builders Pvt. Ltd. and anr. reported in 2022 8 SCR 1121, the Hon'ble Apex Court summed up the parameters for grant of amendments in Paragraph 70. The relevant portion is quoted below:-

"...(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and
(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) 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 and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,
(ii) the amendment changes the nature of the suit, (iii) the prayer for amendment is malafide,..."

34. In Revajeetu Builders and Develpers vs. Narayanaswamy and Sons and ors. reported in (2009) 10 SCC 84, also laid down the principles as follows :-

"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;
(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."

35. The Hon'ble Apex Court once again reiterated that whether the application for amendment was bona fide or mala fide or imperative for proper adjudication of the dispute ought to be looked into, while deciding the application.

36. The court held as follows :-

"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."

37. Under such circumstances, the revisional application is dismissed.

38. There will be no order as to costs.

39. Parties are directed to act on the server copy of this judgment.

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