

**(1991) 09 AHC CK 0099**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 27671 of 1991

Munni Lal Sahu

APPELLANT

Vs

The District Judge and Others

RESPONDENT

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**Date of Decision:** Sept. 19, 1991

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17

**Citation:** (1992) 1 AWC 33

**Hon'ble Judges:** M.P. Singh, J

**Bench:** Single Bench

**Advocate:** K.K. Dubey, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

M.P. Singh, J.

This is a Defendant's writ petition.

2. The Plaintiffs-Respondents filed a suit for ejectment from an open piece of land measuring 100 x 100 feet which was let out to him. The Defendant filed a written statement admitting that he was the tenant of the open piece of land but denied the case of the Plaintiffs.

3. During pendency of the suit, the Defendant moved an application for amendment of the written statement stating that he was tenant of not only the open piece of land but also of two rooms as well standing on the same.

4. The trial court rejected the amendment application. Against which the Defendant filed a revision. It was also dismissed. The present writ petition is directed against the said revisional order.

5. The scope of Order 6 Rule 17 CPC has been considered in a number of cases. The constant views of the courts are "that the courts should be extremely liberal in granting prayer for amendment of the pleadings unless serious irreparable injury is

liable to be caused to the case of the other side. Reference may be made to the cases *Hari Das Aildas Thadani v. Godrej Rustom Kermani* AIR 1982 (SC) 221 and *Mst. Hamidan v. Additional District Judge Allahabad* 1983 (U.P.) RCC 347. But the courts have always put a rider over themselves while exercising the said power. The test for allowing the amendment is to find out whether the proposed amendment will result in serious injustice to the other side or it would change the nature of the case.

6. The courts are required to keep the following guidelines in mind while dealing with an application for amendment.

(i) All the amendments will be generally permissible when they are necessary for determination of the real controversy in the suit.

(ii) In general, the amendments should not cause prejudice to the other side which cannot be compensated in terms of costs.

(iii) The substitution of one cause of action or nature of the claim for another in the original plaint or change of the subject matter of or controversy in the suit is not permissible.

(iv) Introduction by amendment of inconsistent or contradictory allegations in negation of the admitted position on facts or mutually destructive allegations of facts are also impermissible.

(v) Amendment of a claim or relief which is barred by limitation when the amendment is sought to be made should not be allowed to defeat a legal right accrued except when such consideration is outweighed by the special circumstances of the case.

(vi) The principles applicable to the amendment of plaints equally apply to the amendment of the written statements. Reference may be made to a case *Amolakchand Mohanlal v. Firm of Sadharam Tularam* AIR 1954 Nag. 200.

7. It appears from a reading of the written statement that the Defendant has admitted that the Plaintiff had let out the open piece of land but the amendment which is being sought is to introduce the existence of two rooms as well on that land.

8. The purpose of the amendment clearly aims at denying the admission already made and to oust the jurisdiction of the court where the suit is pending. It may also include implications of the application of the U.P. Act XIII of 1972 as well.

9. By the proposed amendment the Defendant is trying to set up a new case. Moreover, by the proposed amendment the Defendant is attempting to negative the admission already made in the written statement regarding letting out of the land only.

10. The question of admission already made by a Defendant before the amendment was sought, was considered by the Supreme Court in the case [Padma Uppal and Others Vs. State of Punjab and Others](#), . In that case the trial court had rejected the application of the Defendants for amendment on the ground that the Defendants wanted to resile from the admissions already made in the written statement. It amounted to repudication of the clear admission. The amendment sought was motivated to deprive the Plaintiff of the valuable right accrued to him by admission and it was against the law. The High Court and the Supreme Court affirmed the order rejecting the amendment of the written statement. According to the view of the Supreme Court, it was true that inconsistent pleas can be made in pleadings but if a pleading seeks to displace the Plaintiff completely from the admissions made by the Defendants in the written statement, it was not permissible. If such amendments are allowed, the Plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the Defendants.

11. In another case [Haji Mohammed Ishaq Wd. S.K. Mohammed and Others Vs. Mohamad Iqbal and Mohamed Ali and Co.](#), the amendment of the written statement was disallowed on the ground that if the amendment sought was permitted to be introduced it would have completely changed nature of the original defence or would bring a new pleading which was never taken in the original plea.

12. Sri K.K. Dubey, learned Counsel appearing on behalf of the Petitioner, has contended that the orders of the courts below are erroneous inasmuch as the application for amendment does not change the nature of the defence. In support of his contention he has relied upon a decision *Satish Chandra Saxena v. Krishna Prasad Saxena* 1989 (15) ALR 106. In that case the court, while considering the scope of Order 6 Rule 17 Code of Civil Procedure, took the view that even admission made by a party may be withdrawn or may be explained away. The view expressed in this case cannot take away the effect of the judgment of the Supreme Court reported in *M/s. Modi Spinning and Weaving Mills Co. (supra)*. That case was not brought to the notice of the Bench deciding the case of *Satish Chandra Saxena and others (supra)*.

13. After hearing learned Counsel for the Petitioner and perusing the record, I am satisfied the orders passed by the courts below are perfectly correct. They do not suffer from any error apparent on the face of the record. I find no merit in this petition. It is accordingly rejected.

14. A certified copy of this order may be issued to the learned Counsel for the Petitioner on payment of usual charges within week.