

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory Jurisdiction)

Present:

JUSTICE AMIN-UD-DIN KHAN, CHIEF JUSTICE
JUSTICE AAMER FAROOQ

C.P.L.A.5215/2024

*[against the judgment dated 21.10.2024
passed by the Peshawar High Court,
Peshawar in W.P. No.2977-P/2023]*

Mehbub Ullah and another

...Petitioner(s)

Versus

Mst. Taj Bibi and others

...Respondent(s)

For the Petitioner(s) : Barrister Umer Aslam, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s) : Mr. Farmanullah, ASC

Date of Hearing : 01.07.2026

JUDGMENT

AMIN-UD-DIN KHAN, CJ.- Through this petition leave has been sought against the judgment dated 21.10.2024 passed by the learned Single Judge of the Peshawar High Court whereby the writ petition filed by the plaintiffs/respondents seeking amendment in the plaint was allowed, whereas the application moved before the Trial Court was dismissed and revision thereagainst too was dismissed.

2. In response to the notice, Mr. Farmanullah, ASC appeared on behalf of respondents, who represents the plaintiffs. A suit for declaration was filed by the respondents/plaintiffs challenging the *Dastbardarnama* executed by the two sisters in favour of their brother, the petitioner.

3. Learned counsel for the petitioners submits that, upon the conclusion of the trial and after the evidence of both parties had been fully recorded, the respondents/plaintiffs moved a second application seeking amendment of the plaint. The said application was dismissed by the learned Trial Court vide order dated 31.05.2023. The revision petition preferred thereagainst also met

the same fate and was dismissed vide order dated 20.06.2023. Aggrieved thereby, the respondents invoked the constitutional jurisdiction of the Peshawar High Court by filing a writ petition, which was allowed through judgment dated 21.10.2024. The petitioners have assailed the said judgment by filing the instant petition seeking leave to appeal.

4. We have heard the learned counsel for the parties at considerable length and have carefully examined the record. The learned Trial Court, as well as the Revisional Court, dismissed the respondents' application for amendment after due consideration of the procedure prescribed by law and the principles governing amendment of pleadings as consistently enunciated by the superior courts. The suit, as originally instituted, seeks a declaration with respect to the alleged *Dastbardarnama* and is presently pending before the competent Civil Court at Mardan, Khyber Pakhtunkhwa. By means of the proposed amendment, the respondents/plaintiffs sought to introduce an altogether new plea, asserting that they had, in February 2023, acquired knowledge that their predecessor-in-interest had purchased certain property through registered Sale Deed No. 1088, dated 09.08.1957, in the name of defendant No. 1, Mehbub Ullah, and consequently sought leave to impugn the validity of the said sale transaction within the framework of the same suit by way of amendment.

5. At this juncture, it would be advantageous to reproduce the provisions of Order VI, Rule 17 of the Code of Civil Procedure, 1908, which read as follows:

“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings 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.”

6. A plain reading of the aforesaid provision reveals that the Court is vested with wide discretionary powers to permit amendment of pleadings at any stage of the proceedings, provided that such amendment is necessary for determining the real questions in controversy between the parties and is conducive to

the ends of justice. This discretion, however, is neither unfettered nor arbitrary; it is a judicial discretion which must be exercised cautiously, judiciously, and in furtherance of justice.

7. We are convinced that an amendment ought not to be permitted where it fundamentally alters the nature and character of the suit, seeks to withdraw or contradict admissions previously made, is actuated by mala fide, causes irreparable prejudice to the opposite party, or is intended to overcome evidentiary deficiencies, contradictions, or the effect of prior judicial determinations. While considering an application for amendment, the Court is under a duty to examine the bona fides of the applicant, the stage at which the amendment is sought, the explanation, if any, for the delay, and the likely impact of the proposed amendment upon the rights accrued to the opposite party.

8. Where an amendment is sought after an inordinate and unexplained delay, such delay, though not by itself conclusive, assumes considerable significance in the exercise of judicial discretion. An amendment introduced after the completion of pleadings and the recording of evidence is ordinarily liable to cause serious prejudice to the opposite party by shifting the nature, scope, or focus of the controversy, particularly where the applicant has an efficacious and independent remedy of instituting a separate suit in respect of the newly asserted cause of action, as is the position in the present case.

9. In this context, any belated amendment introducing a new factual foundation or an independent cause of action warrants heightened judicial scrutiny. The Court must be slow in permitting an amendment that materially changes the complexion of the litigation to the detriment of the opposite party, who has conducted its defence on the basis of the original pleadings. In the instant case, the proposed amendment sought to introduce an entirely new factual assertion relating to a registered Sale Deed of the year 1957 after the evidence of both parties had already been concluded. Such an amendment would substantially enlarge the scope of the suit and compel the petitioners to meet a fresh and distinct case,

thereby causing manifest prejudice and defeating the very object of orderly civil procedure.

10. The learned High Court, in allowing the writ petition, fell into patent error by overlooking the settled principle that its constitutional jurisdiction is not intended to substitute its own discretion for that validly exercised by the subordinate courts. The foremost question which required determination was whether the orders passed by the learned Trial Court and the Revisional Court suffered from any jurisdictional defect, illegality, material irregularity, or patent misreading or non-reading of the record warranting interference in the exercise of constitutional jurisdiction.

11. For the foregoing reasons, we are of the considered view that the impugned judgment rendered by the learned High Court is legally unsustainable. Consequently, leave is granted, and the petition is converted into an appeal. The appeal is accordingly allowed, the impugned judgment passed by the learned High Court is set aside.

CHIEF JUSTICE

JUDGE

Islamabad.
01.07.2026
APPROVED FOR REPORTING
RajaAhsan/-

