

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**FAO No. 261 of 2024**

**Reserved on: 10.03.2026**

**Date of decision: 06.04.2026**

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Sushil Kumar .....Appellant

Versus

Brij Bala (deceased) through LRs .....Respondents

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*Coram*

**The Hon'ble Mr. Justice Sushil Kukreja, Judge.**

<sup>1</sup> *Whether approved for reporting? Yes.*

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For the appellant: Mr. Bhupinder Gupta, Senior Advocate with Mr. Pranjal Munjal, Advocate.

For the respondents: Mr. Shrawan Dogra, Senior Advocate with Mr. Rishi Tandon, Advocate.

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**Sushil Kukreja, Judge.**

The instant appeal, under Order 43 Rule 1(u) of the Code of Civil Procedure, has been maintained by appellant, who was the defendant before the learned Trial Court, against the order dated 19.04.2024, passed by learned District Judge, Kangra at Dharamshala in Civil Appeal No. 155/2022, whereby the case was remanded back to the learned trial Court for trial afresh after allowing applications under Order 1 Rule 10, read with Section 151

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<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment?*

CPC and under Order 6 Rule 17, read with Section 151 CPC, with a prayer to set aside the same with costs.

2. The brief facts of the case are that predecessor-in-interest of respondents namely Brij Bala instituted a suit for possession and recovery of premises marked as "ABCDEFGH" depicted in the site plan, as well as use and occupation charges, wherein, it has been averred that she is owner of double storeyed building, depicted in the site plan on having acquired title over the same vide Will dated 15.05.2003 executed by her husband late Sh. Sant Ram Gupta. The defendant was inducted by her husband as tenant of the shop marked in the site plan as "FHIJKL" on a monthly rent of Rs. 3,000/- vide agreement dated 31.12.1998. Behind aforesaid rented portion lies the area marked as "ABCDEFGH", which was consisting of four rooms, one big hall and two toilets and was separated from rented portion "FHIJKL" by erecting a wooden partition. The portion behind the rented portion depicted as "ABCDEFGH" was never rented out to the defendant, but the defendant by taking undue advantage of the plaintiff and residing

permanently at Dharamshala, illegally removed and uprooted the wooden partition on 01.12.2006 and unauthorizedly occupied the same. On account of illegal and unauthorized occupation by the defendant of the disputed property, he has become liable to pay damages to the plaintiff for the same and occupation of the said area which is assessed to Rs. 7,000/- per month. Therefore, total recovery from defendant by plaintiff from 01.12.2006 till 31.12.2010 is Rs. 3,43,000/-. The plaintiff is also entitled to recover interest on the said amount @ 12% per annum from 01.12.2006 till recovery of the same. A registered legal notice dated 28.12.2010 was also served upon defendant, but he did not reply. Hence, the present suit for recovery of the amount for illegal and unauthorized use and occupation and decree for possession.

3. The defendant contested the suit by filing written statement, wherein, preliminary objections qua locus standi, cause of action, estoppel, maintainability, suppression of material facts, limitation, non-joinder of necessary parties, valuation and jurisdiction were taken. On merits, it has been stated that the property in dispute is not in exclusive

ownership of the plaintiff. The entire property is Gair Mumkin and is entered in the ownership of Raj Kumar and Rakesh Kumar, sons of Dharam Chand to the extent of 2/3rd share in equal shares and the plaintiff to the extent of 1/3rd share and in possession of New Bank of India and Department of Telephones, as tenants. Therefore, it has been alleged that the Will dated 15.05.2003 does not confer absolute title upon the plaintiff, as she is a co-sharer to the extent of 1/3rd share. It has been submitted that there was a civil litigation pending between other two co-sharers namely Rakesh Kumar and Raj Kumar qua the suit property, in which, it was held that plaintiff is only a co-sharer to the extent of 1/3rd share and in the said litigation Rakesh Kumar and Raj Kumar were held to be owners to the extent of 2/3rd share in equal shares. The plaintiff has concealed the factum of previous litigation and has setup a different claim, as to the judgment and decree passed in the previous suit. It is claimed that deceased Sant Kumar Gupta was never exclusive owner of the disputed property. The defendant is in possession of the said area under other co-sharers, who were in actual

possession earlier to defendant. The predecessor-in-interest of the plaintiff was not sure to hand over the possession of area marked as "FHIJKL" and apprehended that there could be a dispute with respect to renting out the shop with other co-sharers, as such, he executed a separate "Ekrarnama" dated 31.12.1998, wherein, he also agreed to pay interest @2% per month to the defendant in case the possession of the said area is not taken over by the defendant due to any reason. Since the deceased was not concerned with the disputed area, so the question of renting out that area to the defendant does not arise. The matter with respect to the disputed area is inter se the defendant and other co-sharers and the plaintiff has no concern with the same in any manner. Therefore, it has been submitted that the plaintiff out of greed and in order to deprive the co-sharers namely Rakesh Kumar and Raj Kumar, has filed the present suit and dismissal of the suit is prayed.

4. In replication, allegations leveled in the written statement have been denied and contents of the plaint are reiterated.

5. On 05.11.2015, the learned trial Court had framed the following issues for consideration and adjudication:-

- “1. Whether the husband of plaintiff had inducted the defendant as a tenant of the shop vide agreement dated 31.12.1998? OPP**
- 2. Whether the area behind the rented shop was not given on rent to the defendant? OPP**
- 3. Whether the plaintiff is entitled for grant of decree for possession of the ground floor area, which is in unauthorized possession of the defendant, as alleged? OPP**
- 4. Whether the plaintiff is entitled for grant of decree for recovery of Rs. 3,43,000/-, as damages for unauthorized use and occupation of the area behind the shop, as prayed for? OPP**
- 5. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD**
- 6. Whether the act, conduct, acquiescence and silence of plaintiff is a bar to file the suit? OPD**
- 7. Whether the suit of the plaintiff is not maintainable? OPD**
- 8. Whether the suit of the plaintiff is not within time? OPD.**
- 9. Whether the suit of the plaintiff is bad for non-joinder of necessary and proper parties? OPD**
- 10. Whether this Court has no jurisdiction to try and decide the present suit? OPD**
- 11. Relief.”**

6. After the parties led evidence and after hearing

the learned Counsel for the parties, the suit of the plaintiff was dismissed with costs. Consequently, the plaintiff preferred an appeal before the learned First Appellate Court and alongwith the appeal filed two applications, one under Order 1, Rule 10, read with Section 151 CPC for impleadment and another under Order 6, Rule 17, read with Section 151 CPC for amendment in the plaint, which were allowed and the case was remanded back to the learned trial Court to decide the same afresh.

7. Feeling aggrieved and dissatisfied, the defendant-appellant preferred the instant appeal against the impugned order dated 19.04.2024.

8. I have heard the learned Senior Counsel for the appellant, learned Senior Counsel for the respondents and have carefully examined the entire records.

9. The perusal of the record reveals that the plaintiff had filed a suit for possession as well as recovery of the amount on account of illegal occupation by the defendant on the premises/area, as mentioned in the plaint. In his written statement, the defendant has taken objection that the suit

property was owned by the other co-sharers namely Raj Kumar and Rakesh Kumar also and in the present suit, there was no mention that the suit for possession and recovery of damages has been filed for the benefit of the aforesaid co-sharers. The learned trial Court dismissed the suit of the plaintiff on the ground that suit filed by the plaintiff was bad for non-joinder of necessary parties. The judgment and decree passed by learned trial Court was challenged before the learned First Appellate Court, wherein, the plaintiff had filed two applications, i.e. one under Order 1, Rule 10, read with Section 151 CPC for impleadment of other co-sharers namely Raj Kumar S/o late Sh. Dharam Chand, Ms. Aruna Gupta D/o late Sh. Dharam Chand, Sh. Vikas Gupta and Sh. Rochan Gupta, Sons of Smt. Ranjana Gupta D/o late Sh. Dharam Chand and another under Order 6, Rule 17, read with Section 151 CPC for amendment of the plaint and learned First Appellate Court allowed both the applications and the persons mentioned in the application under Order 1, Rule 10, read with Section 151 CPC were impleaded as proforma defendants and necessary amendment in

application under Order 6, Rule 17, read with Section 151 CPC was allowed.

10. Learned Senior Counsel for the appellant/defendant contended that despite objection of the defendant, the plaintiff had failed to implead necessary parties in the suit and the suit was rightly dismissed by the learned trial Court on the ground of non-joinder of necessary parties but the learned First Appellate Court had committed grave error while allowing the application for impleading other co-sharers. He further submitted that in the facts and circumstances of the present case the other co-sharers were required to be impleaded in the suit being necessary parties and without them the suit was bad in law. Learned Senior Counsel further submitted that the matter could not have been remanded back to the learned Trial Court after impleading the necessary parties as once the trial court concluded that all the parties were not arrayed before the Court, the Court was bound to dismiss the suit for non-joinder of necessary parties. Learned First Appellate Court erred in allowing the applications of the plaintiff to implead

the necessary parties and to allow the amendment of  
plaint, therefore, he submitted that the impugned order dated  
19.04.2024, whereby the case was remanded back to the  
learned trial Court for trial afresh after allowing applications  
under Order 1 Rule 10, read with Section 151 CPC and  
under Order 6 Rule 17, read with Section 151 CPC be set-  
aside.

11. On the other hand, the learned Senior Counsel  
for the respondent/ plaintiff has submitted that the plaintiff  
was not required to implead the other co-owners of the suit  
property to maintain the suit for possession against the  
defendant since the law in this regard is very well settled that  
a co-owner can maintain a suit for possession against the  
trespasser or a tenant without impleading other co-owners.  
He further submitted that the Learned First Appellate Court  
had rightly allowed the applications of the plaintiff to implead  
the necessary parties and to allow the amendment of plaint,  
therefore, he supported the impugned order dated  
19.04.2024, whereby the case was remanded back to the  
learned trial Court for trial afresh.

12. After going through the entire material on record, it is manifest that although, the plaintiff had initially filed a suit for possession and recovery of damages on account of use and occupation charges of the disputed premises with the averments that she was exclusive owner of the said premises. However, it has come on record that there were other co-sharers also, who were having right, title and interest in the disputed premises. The said fact has not been disputed by defendant, rather, in the written statement, the defendant himself averred that two other co-sharers namely Raj Kumar and Rakesh Kumar were also co-sharers in the suit property.

13. At this stage, it would be relevant to refer to Order 1, Rule 9 and Order I, Rule 10(2) CPC.

***Order I, Rule 9 CPC:***

*"Mis-joinder and non-joinder.-No suit shall be defeated by reasons of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interest of the parties before it: Provided that nothing in this rule shall apply to non-joinder of a necessary party."*

***Order I, Rule 10(2) CPC :***

*"Court may strike out or add parties.-The Court may at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant by struck out and that the name of any person who ought to have . been joined, whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."*

14. In a case reported as ***State of Punjab v. Nathu Ram, AIR 1962 SC 89***, while interpreting Order I, Rule 9 CPC before the addition of proviso, it has been held in paragraph 5 that if the Court can deal with the matter in controversy so far as regards the rights and interests of the appellant and the respondents other than the deceased respondent, it has to proceed with the matter, but if it is not possible for the Court to deal with the matter in the absence of a party, it has to refuse to proceed further and dismiss the matter and such eventuality will occur in the absence of necessary party. It is made clear that Rule 9 will not apply to the defect in the suit as of non-joinder of necessary parties as it cannot proceed in their absence.

15. In an another judgment reported as ***Ramesh***

***Hirachand Kundan Mai v. Municipal Corporation of Greater Bombay and others, (1992)2 SCC 524***, the Supreme Court while dealing with Order I, Rule 10(2) CPC held that though the plaintiff is dominus litis and he may choose to implead only those persons as a defendant against whom he wishes to proceed but under Order I, Rule 10(2) the Court may at any stage of the suit direct addition of necessary or proper parties to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit.

16. Thus from the perusal of the aforesaid judgments, it is clear that a suit cannot be dismissed on the ground of non-joinder of proper parties but this rule does not apply in case of non-joinder of necessary parties. All the objections on the ground of non-joinder of parties must be taken at the earliest but if despite an objection the plaintiff declines to add necessary parties, he can not subsequently be allowed in appeal to rectify the error by applying for amendment.

17. Now, the first question which arises for consideration is as to whether the suit filed by the plaintiff

was bad for non-joinder of necessary parties. In so far as the plea relating to the proposition of law that a suit can be dismissed for non-joinder of necessary party is concerned, there cannot be any dispute with regard to the same since Order 1 Rule 9 CPC provides that a suit can be dismissed if the same is bad for non-joinder of necessary parties however before applying the said provision it has to be scrutinized that the parties, which are claimed to be the necessary parties, are actually necessary or not for the adjudication of the disputes raised between the parties in the present case.

18. The Hon'ble Supreme Court of India in the case of ***Aliji Momonji & Co. vs Lalji Mavji & Ors. (1996) 5 SCC 379*** has led down the test to ascertain whether a party is a necessary party to suit or not. The test, whether a party is a necessary party or not, is twofold i.e. (1) where the presence of a party is necessary for complete and effectual adjudication of the disputes, though no relief is sought, he is a proper party and (2) if in the absence of the said party no effective and complete adjudication of the dispute could be made and no relief could be granted then the said party is a

necessary party.

19. In the backdrop of the above it has to be seen that whether the suit, as filed by the plaintiff, the other co-sharers were required to be impleaded as necessary parties or not.

20. The law relating to filing of a suit for possession by the co-owners is well settled by catena of judgments and it has been held time and again that a co-owner can maintain a suit for possession against the trespasser or a tenant without impleading other co-owners.

21. The Hon'ble Supreme Court way back in the year 1976 in the case of **Shri Ram Pasricha vs. Jaganath (1976) 4 SCC 184** has observed as under:

*"14. There are two reasons for our not being able to accept the above submissions. Firstly, the plea pertains to the domain of the frame of the suit as if the suit is bad for non-joinder of other plaintiffs. Such a plea should have been raised, for what it is worth, at the earliest opportunity. It was not done. Secondly, the relation between the parties being that of landlord and tenant, only the landlord could terminate the tenancy and institute the suit for eviction. The tenant in such a suit is estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant the question of title to the leased property is irrelevant. It is, therefore, inconceivable to throw out the suit on account of non-impleadment of co-owners as such."*

22. The Hon'ble Supreme Court of India in ***Om Prakash and Anr vs. Mishri Lal (Dead) represented by his LR (2017) 5 SCC 451*** it has been held that a suit for eviction of a tenant can be maintained by one of the co-owners and it would be no defence to the tenant to question the maintainability of the suit on the ground that the other co-owners were not joined as parties to the suit. Further that a tenant during the continuance of the tenancy is debarred on the doctrine of estoppel from denying the title of his landlord through whom he claims tenancy, as is enshrined in Section 116 of the Indian Evidence Act, 1872. The relevant portion of the aforesaid judgment, reads as under:

*"32. It is no longer res-integra and is settled by this Court in Sri Ram Pasricha vs. Jagannath and Ors., (1976) 4 SCC 184, Dhannalal vs. Kalawatibai and Ors. (2002) 6 SCC and India Umbrella Manufacturing Co. and Ors. vs. Bhagabandei Agarwalla (dead) by Lrs. Savitri Agarwalla (Smt.) and Ors. (2004) 3 SCC 178 that a suit for eviction of a tenant can be maintained by one of the co-owners and it would be no defence to the tenant to question the maintainability of the suit on the ground that the other co-owners were not joined as parties to the suit. The judicially propounded proposition is that when the property forming the subject matter of eviction proceedings is owned by several co-owners, every co-owner owns every part and every bit of the joint property along with others and thus it cannot be said that he is only a part owner or a fractional owner of the property and that he can alone maintain a suit for eviction of the tenant without joining*

*the other co-owners if such other co-owners do not object. In the contextual facts, not only the compromise decree, as aforementioned, has declared the appellants to be the joint owners of the suit premises, their status as such has not been questioned at any stage by anyone interested in the title thereto."*

34. *"That a tenant during the continuance of the tenancy is debarred on the doctrine of estoppel from denying the title of his landlord through whom he claims tenancy, as is enshrined in Section 116 of the Indian Evidence Act, 1872, is so well- settled a legal postulation that no decision need be cited to further consolidate the same. This enunciation, amongst others is reiterated by this Court in S. Thangappan vs. P. Padmavathu (1999) 7 SCC 474 and Bhogadi Kannababu and Ors. vs. Vuggina Pydamma and Others (2006) 5 SCC 53. In any view of the matter, the appellants, being the son of Bhola Nath, who at all relevant time, was the landlord vis-a-vis the original defendant and the respondents in terms of Section 3(j) of the Act, their status as landlords for the purpose of eviction under the Act, could not have been questioned so as to non- suit them for want of locus."*

23. In ***Prem Kishore and Others Vs. Brahm Prakash and Others, (2023) 19 SCC 244***, the Hon'ble Supreme Court has held that even otherwise if former suit is dismissed by the trial Court on the ground of non-joinder or mis-joinder of parties, the decision, not being on merits would not be res judicata in a subsequent suit. The relevant portion of the aforesaid judgment reads as under:-

*"34. The general principle of res judicata under Section 11 of the CPC contain rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in*

*the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff's appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be res judicata in a subsequent suit"*

24. Thus merely because the other co-owners were not impleaded as parties to the suit being the co-owners of the suit property, the suit could not be held to be not maintainable since it is well settled that as suit for ejectment/possession may be filed by any of the co-owners and it is not necessary to join as a party to such a suit and it is also settled law that there cannot be an estoppel against the law, therefore, the suit filed by the plaintiff cannot be held to be bad for non-joinder of necessary parties as a co-owner can maintain a suit for possession against the trespasser or

a tenant without impleading other co-owners.

25. Thus in the case on hand, the learned trial Court had clearly erred in law in holding that the suit is liable to be dismissed for non-joinder of necessary parties, overlooking the provisions of Order 1, Rule 9 and Order 1, Rule 10 (2) of the CPC which make it clear that *'no suit shall be defeated by reason of the misjoinder or non-joinder of parties and that the Court may at any stage of the proceedings either upon or without the application of either party and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added'*. Moreover the suit could not have been dismissed on account of non-joinder of necessary parties since it is settled law that a co-owner can maintain a suit against the trespasser without impleading other co-

owners.

26. Examining the situation from another angle, it is seen that the plaintiff, having suffered the decree of dismissal of suit, filed an appeal and moved the application under Order 1 Rule 10 CPC before the learned First Appellate Court. Paras 5 to 8 of the said application are required to be taken note of and the said paras are reproduced below:-

*“(5) That in conclusion, the trial court has dismissed the suit of the applicant/appellant/plaintiff while holding that the co-sharers Raj Kumar & Rakesh Kumar are necessary parties and without impleading them, no effective decree can be passed in absence of such parties either defendants or proforma defendants.*

*(6) That the applicant/appellant/plaintiff is not claiming the share of Raj Kumar & Rakesh Kumar and is not disputing the previous judgment Ex. D-1 and admitting the claim of Raj Kumar & Rakesh Kumar and present suit has also been filed for their benefits. Rakesh Kumar had died on 17.03.2022 as issueless, being unmarried and as per the so called ‘Will’, Ms. Aruna Gupta sister, Vikas Gupta & Rochan Gupta sister’s sons are the legal heirs of said Rakesh Kumar, who are shown in the heading of this application as serial No. 2 to 4.*

*(7) That the present persons are necessary parties in the present appeal as well as in the original civil suit in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the present matter in controversy. By allowing the present application,*

*the respondent/defendant will not suffer any loss and no prejudice will be caused. The interest of the present persons who are to be impleaded and added as proforma defendants in the original civil suit as well as proforma respondents in the present appeal, is same and they are to be impleaded in view of the above said facts as well as of the findings of the trial court, in the interest of justice.*

*(8) That even the trial court can suo moto implead the said persons being co-sharers of the suit land & property as proforma defendants in the civil suit or direct the applicant/appellant/plaintiff to implead the other co-sharers, i.e. Raj Kumar & Rakesh Kumar, for adjudicating upon the matter in controversy between the parties and thereafter, the civil suit has to be decided and it is for the Hon'ble trial court that should not go into the technicalities. Procedure is meant to advance the cause of action, not to implede it."*

27. A perusal of the aforesaid paras clearly show that the plaintiff has categorically stated that *"even the trial court can suo moto implead the said persons being co-sharers of the suit land & property as proforma defendants in the civil suit or direct the applicant/appellant/plaintiff to implead the other co-sharers, i.e. Raj Kumar & Rakesh Kumar, for adjudicating upon the matter in controversy between the parties and thereafter, the civil suit has to be decided and it is for the Hon'ble trial court that should not go into the*

*technicalities. Procedure is meant to advance the cause of action, not to implede it.”*

28. In the opinion of this Court, even otherwise if the law permits a co-owner to file a suit for possession against the tenant/unauthorized occupant without impleading the other co-owners then there cannot be any estoppel against the law and as such the suit filed by the plaintiff without impleading the other co-owners cannot be held to be bad for non- joinder of necessary parties. It shall also not be out of place to mention here that the suit filed by the plaintiff against the defendant was that for possession and recovery of damages and by no stretch of imagination it can be said that without impleading the other co-owners of the suit property no effective order/adjudication can be done in the present case and even as per the test laid down in the case of ***Aliji Momonji (Supra)*** for determining as to who is the necessary party, then it can be safely held that the other co-owners of a property are not required to be impleaded in a suit for possession as a necessary party since an effective order of possession and recovery of damages can be passed

in the absence of such co-owners and at best the other co-owners could only be a proper party and a suit is not bad for not impleading proper parties.

29. The next contention raised by the learned Senior Counsel for the appellant is that the learned First Appellate Court had erred in allowing the application for amendment of plaint without any application of mind and by ignoring the settled principles of law.

30. The perusal of the record reveals that since the application under Order 1, Rule 10, read with Section 151 CPC has been allowed, therefore, the learned first Appellate Court rightly held that the proposed amendment in the plaint is necessary for proper adjudication of the dispute between the parties.

31. In ***Vasantha (dead) through legal representative Vs. Rajalakshmi alias Rajam (dead) through legal representatives, (2024) 5 SCC 282***, the Hon'ble Supreme Court has held that amendment of a plaint can be permitted at any stage of the suit even at the second appellate stage. The relevant portion of the aforesaid

judgment reads as under:-

*“54. Adverting to the facts of the present case, on a perusal of the plaint, it is evident that the plaintiff was aware that the appellant herein was in possession of the suit property and therefore it was incumbent upon him to seek the relief which follows. Plaintiff himself has stated that defendant no. 1 was in possession of the subject property and had sought to transfer possession of the same to defendant no. 2, thereby establishing that he himself was not in possession of the subject property. We are not inclined to accept the submission of the learned counsel for the respondent on this issue. We note that after the death of the life-estate holder in 2004, there was no attempt made by the original plaintiff to amend the plaint to seek the relief of recovery of possession. It is settled law that amendment of a plaint can be made at any stage of a suit, even at the second appellate stage.”*

32. Therefore, learned First Appellate Court did not commit any error in allowing both the applications and in remanding the matter back to the learned trial Court to decide the suit afresh.

33. Hence, the appeal filed by the appellant being devoid of any merit is dismissed and the impugned order dated 19.04.2024 is upheld. Since the suit pertains to the year 2011, the learned Trial Court is directed to decide the same as expeditiously as possible and in any event not later than **31<sup>st</sup> October 2026**.

34. The appeal stands disposed of in the above terms,  
so also the pending applications, if any.

**( Sushil Kukreja )**  
**Judge**

**6<sup>th</sup> April, 2026**  
(raman)