could arrive at only after affording an opportunity to the petitioner-Bank of leading evidence to prove those documents or affording them an opportunity of filing certified copies of those documents in accordance with the provisions of the Indian Evidence Act. It has been stated in the petition that on that very day, that is, June 15, 1971, the counsel for the petitioner-Bank offered to file the certified copies of certain documents which he had obtained to prove that the attached properties were mortgaged with the **Bank but the Tax** Recovery Officer did not allow him to produce the same. In the return, it has been stated that the application for producing the documents was filed by the counsel for the petitioner-Bank on June 15, 1971, but after the Tax Recovery Officer had pronounced the orders. Be that as it may, the procedure followed by the Tax Recovery Officer is violative of the principles of natural justice and the consequent order passed by him cannot be upheld.

(10) For the reasons given above, this petition is accepted and the impugned order of the Tax Recovery Officer dated June 15, 1971, a copy of which is Annexure 'Z' to the writ petition, is hereby quashed. The Tax Recovery Officer should await the decision of the civil suit or sell the attached properties subject to the claim of the petitioner-Bank as may be found due in the civil suit. In the proclamation of sale, it is necessary to mention the encumbrances to which the attached properties, which are sought to be sold, are subject in order to enable the prospective purchasers to assess the proper value of the interest that is being sold. If the property is brought to sale, the whole claim of the Bank must be mentioned in the proclamation of sale. In the circumstances of the case I make no order as to costs.

N. K. S.

REVISIONAL CIVIL

Before R. S. Narula, J.

GULWANT KAUR.—*Petitioner.*

versus

MOHINDER SINGH ETC.—*Respondents.*

Civil Revision No. 1309 of 1971.

January 18, 1972.

Code of Civil Procedure (Act No. V of 1908)—Order 6, rule 17— New cause of action or new defence—Whether can be added by way of amendment of the pleadings. New plea barred by time—Amendment to add such plea—Whether to be disallowed.

Held, that under Order 6, rule 17 of the Code of Civil Procedure, a plaintiff may add a new cause of action and the defendant may add a new defence. Even a new case may be allowed to be introduced. There is no injustice if the other side can be compensated for it by costs. The mere fact that the cause of action has been changed is no ground *per se* for disallowing the amendment. If the new plea sought to be added is not at all inconsistent with the original plea, but is merely sought to be taken up in the alternative the amendment should be allowed. If, however, the taking up of the new plea in the alternative by amending the pleadings is barred by time or is destructive of the original plea and both the pleas could not have been taken up originally in the alternative, the amendment ought to be disallowed. (Paras 2, 3 and 5)

Petition under Section 115 *of Act* 5 *of* 1908, *for revision of the order of* the *Court of Shri Harchand Singh Maunder, Sub-Judge, 1st Class (A), Sangrur, dated the 10th November,* 1971. *dismissing the application.*

S. P. Goyal, Advocate, *for the petitioner.*

T. S. Mangat, Advocate, *for the respondents* 1 to 3.

JUDGMENT

Narula, J.—(1) In a suit for possession of the disputed land filed by Mohinder Singh and Gurnam Singh respondents 1 and 2 (hereinafter called the plaintiffs) on the basis of a registered sale-deed executed in their favour on June 18, 1968, by the husband of the defendant-petitioner, the defence of the petitioner was that the disputed property had been gifted to her on April 13, 1956, that the gift was oral, was accompanied by possession and that the petitioner had been in continuous possession of the land through her son Madan Jit Singh (respondent No. 3 before me) since April, 1956. After the conclusion of the evidence led by the plaintiffs in the affirmative and of the evidence led by the defendant-petitioner and before the recording of the plaintiffs' evidence in rebuttal, an application was made by the petitioner in the trial Court under Order 6 Rule 17 of the Code of Civil Procedure for permission to amend her written statement so as to add an alternative defence to the claim of the plaintiffs about her being not liable to deliver possession to the plaintiffs on the ground that even if she was not able to prove the oral gift, she had become an absolute owner of the property, by adverse possession as she had been in continuous possession of the property since April, 1956. By his order, dated November 10, 1971, the learned Subordinate Judge, Sangrur, dismissed the application

of the petitioner by holding that if the amendment was allowed, it would change the nature of the defence and that a new ground of defence could not be permitted to be added by amending the written statement. He held that the new defence sought to be added would be entirely inconsistent with and contradictory to the original plea taken by the petitioner in her defence and would also result in setting up a new case for her. The application was disallowed with the observation that it had been given for delaying the decision of the suit which had been pending for more than three years.

(2) Mr. S. P. Goyal, the learned counsel for the petitioner, has referred me to the judgment of my Lord, the Chief Justice, in *Raghvir Prasad etc.* v. *Chet Ram,* (1). In that case it has been held that under Order 6 Rule 17 of the Code a plaintiff may add a new cause of action and the defendant may add a new defence. It was observed that even a new case may be allowed to be introduced, and that there is no injustice if the other side can be compensated for it by costs. The learned Chief Justice also observed that the mere fact that the cause of action has been changed is no ground *per se* for disallowing the amendment. In that case the question related to the amendment of the plaint. The suit had been filed for possession of a house by Raghvir Prasad and his sister Tara Wati on the basis of inheritance. Subsequently, they had applied for leave to amend the plaint so as to claim the same property on the basis of a will. The trial Court refused the amendment. While allowing the revision petition against that order, the High Court held that there was no reason why the plaintiffs in that case should be prevented from having the cause of action sought to be added by the amendment adjudicated upon. The judgment of the learned Chief Justice in the case of *Raghvir Prasad etc.* (supra) no doubt supports the petitioner's claim for amendment of her written statement.

(3) Mr. T. S. Mangat has on the other hand pressed into service the judgment of my Lord, the Chief Justice in *Gurmukh Singh* v. *Dalip Singh and others,* (2) on which reliance has also been placed by the trial Court for passing the order under revision. In that case the trial Court had allowed an amendment of the plaint in a suit for pre-emption so as to permit the plaintiff therein to claim a superior right of pre-emption on the ground of his being a co-sharer, after the expiry of the period of limitation for filing the suit when

(1) 1971 Curr. L.J. 612.

(2) 1971 P.L.R. 830.

the only ground on which the right of pre-emption had originally been claimed in his plaint was that the pre-emptor was the brother's son of the vendor. Setting aside that order in revision, it was held by the High Court that the amendment allowed introduced into the plaint a ground which did not exist therein before and which had got absolutely no connection with the grounds taken earlier. In those circumstances it was held that the trial Court did not exercise its discretion under Order 6 Rule 17 of the Code of Civil Procedure in a judicial manner and had transgressed its jurisdiction in allowing a new ground for claiming a superior right of pre-emption being taken at the time when a suit based on that ground would have been barred by time. The considerations which weighed with the learned Chief Justice in *Gurmukh Singh's case* are not at all present in the case before me. The taking up of the new defence by the petitioner in the alternative by amending her written statement is not barred by time. The defence is not based on any new set of facts. In fact it is intimately connected with the defence already set out. The date from which the petitioner claims to be in possession is the same. She did not claim to have been in permissive possession under her husband at any stage since April, 1956. In each of the two pleas in question, she claims to have been in possession as owner which would in either eventuality be adverse to the interest of her husband. All that she seeks to plead is that if she fails to prove the oral gift, but succeeds in proving that she had been in possession of the property in dispute since April 13, 1956, in the purported exercise of her right as owner of that property, her such possession had itself ripened into title by adverse possession. I am not concerned with the fact whether her such plea is at all likely to succeed or not, but only with the fact that the new plea sought to be added is not at all inconsistent with the original plea, but is merely sought to be taken up in the alternative. Consideration for allowing an amendment of plaint in a pre-emption suit are entirely different.

(4) Mr. Mangat then referred to the judgment of a Full Bench of the Lahore High Court in *Karam Dad and others*, v. *Mt. Mohammad Bibi and others*, (3) wherein the plaintiffs' case throughout had been that the property in dispute in that litigation was non-ancestral but they sought to amend the plaint at the appellate stage so as to substitute the word "ancestral" in place of the word "non-ancestral". The Lahore High Court held that the amendment could not be allowed at a late stage in the appeal as it would necessitate a

(3) A.I.R. 1942 Lah. 1.

remand for further inquiry as to the ancestral nature of the property and the parties had led evidence on the issue already framed on the question whether the property was ancestral or not. The law laid down in that case does not appear to be relevant for deciding the application of the petitioner in the instant case.

(5) Learned counsel for the plaintiffs has also referred to the judgment of a learned Single Judge of the Madras High Court in the *State of Madras* v. *Muniyappa Chetty* (4). The plaintiff in that case had claimed ownership of certain property on the ground that he had become an absolute owner thereof by reason of adverse possession for over sixty years, against the State Government. He subsequently wanted to amend the plaint so as to claim that he and his predecessors-in-interest had been in possession of the property on the basis of an ancient grant which had been lost in antiquity. It was held that such an amendment could not be allowed as the new case sought to be set out was entirely different which would change the character of the case as was originally put forward by the plaintiff. In the present case, the possession is claimed under both the pleas with effect from the same date. The new plea sought to be raised is not destrictive of the original plea and both the pleas could have been taken up in the suit originally in the alternative.

(6) In *A. K. Gupta and Sons Ltd.* v. *Damodar Valley Corporation,* (5) cited by Mr. Mangat the amendment sought to introduce a claim based on the same cause of action, namely the same contract, had been refused by the High Court at the appellate stage. The Supreme Court allowed an appeal against the judgment of the High Court refusing to allow the amendment on the ground that the plea sought to be added by amendment would amount merely to a different or additional approach to the same facts, and that such an amendment could be allowed even after the expiry of the statutory period of limitation. The judgment of the Supreme Court in case of *A. K. Gupta and Sons Ltd.* (supra), appears to be more in favour of the petitioner than the contesting respondents.

(7) In *Chunialal* v. *Deoram and another,* (6) it was observed by a learned Single Judge of the Nagpur High Court that the Court will not allow an amendment which involves a complete change of

(4) A.I.R. 1956 Mad. 679.

(5) A.I.R. 1967 S.C. 96.

(6) A.I.R. 1948 Nag. 119.

front in the defence. It was held that a plaint cannot be allowed to be amended so as to introduce a new cause of action which would change the nature of the suit, so also the defence cannot be allowed to be altered so as to introduce a different set of circumstances inconsistent with the circumstances pleaded to begin with. In that case the original justification given by the defendants for being in possession of the property in dispute was that their transferors were mere licensees of the *abadi*, but the defendants by their amendment wanted to raise for the first time in appeal a new question of controversy, namely, that the transferors were proprietors, and, therefore, had transferable interest in the site. On these facts it was held that the plea that the transferors were owners was inconsistent with the plea that they were licensees and the amendment sought for being in the nature of complete change of the front in defence, ought not to be allowed. In the present case the defence under the original plea as well as under the new plea sought to be introduced by the amendment is that the petitioner is the owner of the land and is in possession of the same since April, 1956, to the exclusion of her husband. It cannot, therefore, be said that there is any change of the front in defence on the part of the petitioner in the present case. Moreover, somewhat different considerations apply to the discretion to be exercised by an appellate Court for allowing an amendment of the pleadings than the considerations which must weigh with a trial Court for disposing of such an application before even the recording of the entire evidence sought to be led by the parties is concluded.

(8) For the foregoing reasons, I would hold that the trial Court illegally refused to exercise its jurisdiction under Order 6 Rule 17 of the Code of Civil Procedure in having refused to allow the petitioner to amend her written statement in the manner indicated in her application given for that purpose.

(9) Mr. Mangat lastly submitted that allowing the proposed amendment at this late stage would unduly delay the disposal of the suit which is already quite old. Inordinate delay in making an application for amendment is no doubt a valid consideration for deciding the application on merits. In the present case, however, the petitioner has stated in paragraph 4 of her grounds for revision that "all the evidence on the plea sought to be introduced by way of amendment has already been led by the petitioner and she does not claim to lead any further evidence. Mr. Mangat submits that a mixed question of law and fact having been allowed to be raised by

amendment of the written statement, a new issue will have to be framed by the trial Court (possibly after permitting the plaintiffs to file a replication in reply to the amended written statement), and that the petitioner may then like to lead evidence on the new issue on which the burden has to be on the defendant. Mr. S. P. Goyal states that he is giving a categorical and irrevocable undertaking to the Court under explicit instructions from his client, that she would not lead any evidence on the issue which, might be framed by the trial Court on account of the amendment claimed by her, and that the evidence already led by her on the remaining issues may also be read by the Court in support of the new plea and on the issue based thereon. In this situation, the question of delay also does not arise. The evidence already led by the defendant-petitioner shall be read as her evidence on the new plea. The plaintiffs have yet to lead evidence in rebuttal. They would be at liberty to adduce any additional evidence to rebut the evidence already led by the defendant which may be relevant to the new plea in addition to the evidence in rebuttal which they have otherwise to lead.

(10) This revision petition is accordingly allowed and the application of the petitioner for amendment of her written statement is granted in terms of what is already stated above conditional on her paying a sum of Rs. 100 as costs to the opposite party. The costs of the revision petition shall be costs in the suit. The parties are directed to appear before the trial Court on February 21, 1972.

N. K. S.

ESTATE DUTY REFERENCE

Before D. K. Mahajan and Prem Chand Jain, JJ.

THE CONTROLLER OF ESTATE DUTY, PUNJAB, HARYANA, J&K, HIMACHAL PRADESH AND CHANDIGARH, PATIALA,—*Applicant.*

Versus

M. L. MANCHANDA, FARIDABAD TOWNSHIP.—*Respondent.*

Estate Duty Reference No. 1 of 1970.

January 24, 1972.

Estate Duty Act (XXXIX of 1953)—*Sections* 5 *and* 6—*Property owned by a husband standing* benami *in the name of his wife—whether liable to the levy of estate duty on the death of the wife.*