

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**Present:
The Hon'ble Justice Md. Shabbar Rashidi**

**CO 1028 of 2023
Shrimati Radharani Jana
Vs.
Madhusudan Dey**

For the Petitioner : Mr. Rabindranath Mahato, Advocate
Mr. Aritra Shankar Ray, Advocate

For the Opposite Party : Mr. D.K. Adhikari, Advocate
Mr. S.K. Adhikari, Advocate
Mr. Debdip Adhikari, Advocate

Hearing concluded & Judgment on: **September 17, 2026**

Uploaded on: **September 18, 2026**

MD. SHABBAR RASHIDI, J.:-

1. The instant revisional application has been filed by the plaintiff in Title Suit No.1157 of 2016 pending before the learned Civil Judge (Senior Division), 1st Court, Paschim Medinipur.
2. By the impugned order being Order No.23 dated December 2, 2022, an application under Order VI Rule 17 of the Civil Procedure Code filed by the plaintiff registered as IA No.: 2 of 2022 in the said suit was rejected by the learned Trial Court.

3. At the time of hearing, learned Advocate appearing for the plaintiff/petitioner submits that by the proposed amendment neither the nature and character of the suit was being changed nor it tend to cause any prejudice to the defendant in the suit.
4. Learned Advocate appearing for the plaintiff/petitioner further submits that such amendment proposed to be incorporated, the plaintiff/petitioner also did not take away any admission made on the part of the plaintiff. He submits that the learned Trial Court erred in rejecting the petition under reference.
5. On the other hand, learned Advocate appearing for the opposite party submits that by incorporating the proposed amendment, the nature and character of the suit was going to be changed. He further submits that the plaintiff purchased a particular portion of the suit properties from the defendant/opposite party. The plaintiff in the suit for declaration has right and title. However, by incorporating the proposed amendment, the suit becomes the suit for recovery of possession which is not permissible in law. He submits that the learned Trial Court was quite justified in passing the impugned order.
6. The plaintiff/petitioner filed Title Suit No.1157 of 2016. It was the case of the plaintiff in his plaint that the defendant was a licensee in respect of a portion of the suit properties. The defendant refused to vacate the suit properties on determination of the licence by the plaintiff for which the plaintiff/petitioner filed the Title Suit 1157 of 2016 seeking the reliefs,

namely, declaration of his title over 'ka' schedule property mentioned in the plaint on the basis of a purchase deed and for demarcation of 'ka' schedule property as purchased property of the plaintiff in terms of the deed. The plaintiff also prayed for demarcation of the 'ka' schedule property of the plaint by appointing a Survey-Knowing Commissioner. It was also prayed that a decree of eviction of a licensee be passed in favour of the plaintiff as against the defendant in respect of 'ka/1' schedule property. There were some ancillary reliefs.

7. Subsequently, the plaintiff/petitioner made an application under Order VI Rule 17 of the Civil Procedure Code. By such petition, the plaintiff/petitioner intended to incorporate such facts in the plaint to the effect that the plaintiff was forcefully dispossessed from 'ka' schedule property at the hands of the defendant on February 21, 2018, i.e., after the institution of Title Suit No.1157 of 2016.
8. By filing the petition under Order VI Rule 17 of the Civil Procedure Code, the plaintiff/petitioner prayed for incorporation of such facts with regard to forcefully dispossession of the plaintiff from the 'ka' schedule property of the plaint by the defendant. The plaintiff also proposed to incorporate a prayer in the original plaint by way of amendment seeking the recovery of possession of the portion of the suit properties having brick construction covered by tin and asbestos.
9. By the impugned order, the learned Trial Judge held that he was of the view that such amendment, if allowed, was going to change the nature of

the suit. According to the learned Trial Court, it was going to be a suit for recovery of possession as obvious a simplicitor suit for declaration of title and eviction of licensee.

10. It is the submission of the learned Advocate for the defendant/opposite party that the plaintiff purchased a particular portion of the suit properties as mentioned in their purchase deed. However, subsequently, the plaintiff has started claiming of some other portions of the schedule properties. The Title Suit has been filed by the plaintiff to get a decree of declaration on such portion which he has subsequently started claiming.
11. Learned Advocate appearing for the defendant/opposite party has further stated that the plaintiff/petitioner purchased the property from the defendant. He also claimed that the case made out by the plaintiff/petitioner that the plaintiff made constructions over the disputed property is out and out false. There is no existence of any structure over the suit properties.
12. Be that as it may, initially, the suit was filed by the plaintiff/petitioner with prayers for declaration of his title over the properties, demarcation of the properties by a Survey-Knowing Commissioner and eviction of licensee therefrom.
13. By the proposed amendment, the plaintiff/petitioner has made out a case that he was forcefully dispossessed by the defendant after the institution of the case and such facts are required to be brought on record for proper adjudication of the suit. Moreover, by the amendment, the

plaintiff/petitioner has also sought to incorporate a prayer in the original plaint for recovery of possession of the suit properties from where the plaintiff was allegedly forcefully dispossessed.

14. The aforesaid facts, to my mind, do not change the nature and character of the suit. Moreover, whether the defendant was possessing the suit property as a licensee or the plaintiff was dispossessed therefrom forcefully by the defendant, a decree has been prayed for recovery of possession of the disputed properties. All these facts are subject to proof at the trial.
15. Therefore, in the aforesaid circumstances, I am of the opinion that the proposed amendment does not change the nature and character of the suit properties. The same shall in no way cause any prejudice to the defendant.
16. Accordingly, the impugned order is hereby set aside.
17. The petition under Order VI Rule 17 of the Civil Procedure Code filed on behalf of the plaintiff/petitioner on August 9, 2019 stands allowed.
18. The learned Trial Court shall proceed with the suit in accordance with law as early as possible.
19. **CO 1028 of 2023** is **disposed of** accordingly.

(Md. Shabbar Rashidi, J.)

(AD)