

Sn 18.3.21
2

C.O.214 of 2021

**JOGEN MONDAL VS. KHAGEN PATRA &
ORS.**

**Mr. Sandip Das
..for the petitioner**

Despite service, none appears on behalf of the opposite party/defendant No.1. Let the affidavit of service filed in Court today be taken on record. It appears that the contesting defendant and his learned Advocate have been served. The other opposite parties are either plaintiffs or proforma defendants and service upon them can be dispensed with.

The petitioner is aggrieved by an order dated July 30, 2019 passed by the learned Civil Judge, Junior Division, Kakdwip, District South 24 Parganas, rejecting the application for amendment of the plaint. It is submitted that the said amendment was necessary for proper adjudication of the dispute between the parties in view of the points raised by the defendant No.1 in his additional written statement. It is submitted that on the basis of the averments made in the additional written statement for the first time, that the suit property had vested in the State of West Bengal and the defendant No.1 had been allotted a patta, the amendment of the plaint was necessary so that such contentions of the

defendant No.1 can be denied. It appears from the amendment that the petitioner wishes to incorporate pleadings that they are not aware of any vesting pursuant to any Big Raiyat case and the plea of vesting is false and baseless and the alleged patta, if any, is fake and obtained by fraud.

From the order impugned, it appears that the learned Court below has rejected the application on the ground that the amendment application was filed after five years from the date of filing of the written statement and the plaintiff wanted to challenge the vesting procedure and the State of West Bengal would have to be transposed as a defendant and not as a proforma defendant, which is not permissible in law. The delay is not of five years as noted by the learned court below.

Having gone through the schedule of amendment, I do not find that the petitioner has made any prayer for setting aside the vesting or the patta. Such reliefs are available before another form. The petitioner wants to incorporate the pleadings to the effect that the plaintiffs are the owners in possession of the suit property and that there has never been any vesting proceeding or a Big Raiyat case and the alleged patta is fake, false and obtained by fraud, if at all. Declaration to the said effect has been prayed for. By this amendment, the plaintiffs are not challenging the vesting and do not

pray for setting aside the vesting. The plaintiffs want to deny the plea of vesting taken by the defendant No.1 in the additional written statement. Such amendment, if allowed will not change the nature and character of the suit. Moreover the merits of the amendment shall not be decided at the time of consideration of the application for amendment. Whether the reliefs claimed can be allowed is also a matter of trial.

Thus, I do not find any reason not to allow such amendment. The impugned order is quashed and set aside.

The learned Court below shall allow the plaintiffs to file the amended plaint within the next date fixed. I do not find that the delay in filing the amendment application is fatal to the suit and is intentional. The defendants shall be given a chance to file their additional written statement and the parties will also be allowed to recall witnesses for further evidence, if necessary, on the basis of the amendment incorporated. Such amendment shall be allowed upon payment of costs of Rs. 2,000/- by the plaintiffs to the defendant No.1.

This revisional application is disposed of.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)

