

**MOKTAR ALI LASKAR & ORS. VS. YAKUB
SEIKH & ORS.**

**Mr. R.N. Duttta
Mr. Monoranjan Jana
..for the petitioners**

This revisional application has been filed challenging the order dated March 4, 2020 passed by the learned Civil Judge, Senior Division, 2nd Court, Baruipur District South 24 Parganas in Title Suit No. 146 of 2017. By the said order, the learned Court below allowed an application for plaint filed by the opposite parties. This is a partition suit. The suit property measures about 56 decimals in C.S. Khatian No.328 and C.S. Plot No. 626.

The plaintiffs claiming to be the owners of a part of the suit property as heirs of Phuljan Bibi, sister of Methor Molla filed the suit for partition against the defendants as co-sharers. The said suit property, according to the defendants/petitioners were not joint property and the entire property was sold to Kinu Laskar. In paragraphs 20 and 21 of the written statement, the defendants have narrated how plot C.S.

No. 626 devolved upon the defendants and how their names had been finally recorded in the record of rights. It was further narrated that the heirs of Methor Molla sold the share of Methor Molla to one Kinu Laskar and that Kinu Laskar in became the owner of entire plot No.626. Ultimately the plot was recorded in the names of the sons of Kinu Laskar and some defendants are claiming as heirs of one son of Kinu Laskar, one Abdul Mujib as owners and dakhalkars. That Methor Molla did not have right title and interest in the property having sold his share.

Upon disclosure of such facts in the written statements, the plaintiffs sought to amend their plaint by incorporating paragraph 6A. In paragraph 6A, the plaintiffs sought to incorporate the pleadings to the effect that in a particular suit the predecessor of the defendants had admitted that the entire plot 626 had been owned by co-sharers and there was an amicable settlement when Methor Molla through whom the plaintiffs claimed title, had acquired title over a portion of the plot. The plaintiffs could not incorporate pleadings with regard to why and how the plaintiffs could not get their names recorded in the record of rights and the entry of the names of the defendants were not correct. These are facts, which are explanatory and clarificatory to be incorporated in the suit. The basis of such

pleadings are already appearing in paragraph 6 of the plaint. The plaintiffs have already stated that they were claiming as heirs of Phuljan Bibi sister of Methor Molla. The defendants countered such statement by tracing their title to the property. Thereafter, the amendment was sought to deny to such contention of the defendants by incorporating explanatory and clarificatory statements.

Mr. Dutta, learned Advocate appearing on behalf of the petitioners submits that the pleadings without any prayer have no impact and the pleadings should not be allowed in a partition suit. The amendment sought for would change the nature and character of the partition suit.

I have considered the schedule of amendment and I have already mentioned hereinabove that the same are explanatory and clarificatory in nature. They are in fact a further explanation to and further denial of the contentions of the defendants in the written statement especially in paragraphs 20 and 21 thereof.

The merits of the amendment are not to be considered at this stage. The same will be decided at the trial.

This revisional application is thus dismissed.

Time to file the written statement is extended by a period of four weeks from date.

As the suit is of 2017, the learned Court below is directed to dispose of the interlocutory applications within two months from the next date fixed, independently and in accordance with law upon affording an opportunity to all the parties to contest the same. Once the interlocutory applications are disposed of, the learned Court below is requested to dispose of the title suit expeditiously.

There will be however no order as to costs.

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

(Shampa Sarkar,J.)