

31.08.2023
SL No.59
Court No.3

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

CO 96 of 2023

In the matter of : Tapash Sarkar @ Tapash Sarkar

Mr. Bhaskar Roy Mahashaya
Mr. Sannidhya Dutta

.....for the petitioner.

Heard Mr. Roy Mahashaya, learned counsel for
the petitioner.

It is submitted that the plaintiff filed a suit being
Title Suit No. 70 of 2012 for declaration and
permanent injunction. Learned trial court dismissed
the suit.

The plaintiff assailed the judgment before the
learned Additional District Judge, Jalpaiguri and
filed an application under Order VI Rule 17 of the
Code of Civil Procedure, seeking amendment of the
plaint by deleting the prayer (a),(b) and (c) of the
plaint i.e. prayer for declaration of title and
possession of the plaintiff over the suit property, for
further declaration that the defendants do not have
right, title interest and possession over of the suit
land with further prayer for declaration that the
defendants do not have right to cut down any trees
and also to encroach the suit land in any manner.

Instead the plaintiff intends to pursue the appeal with the prayer for permanent/temporary injunction restraining the defendants, their servants, agents or any persons from entering into the suit land. Learned First Appellate Court was pleased to reject the prayer for amendment by the order impugned.

It was held by learned First Appellate Court that if the amendment as sought for, is given effect to, it would change the nature and character of the suit that apart learned First Appellate Court did not find from the conduct of the plaintiffs/appellants, due diligence as the amendment sought for at the appellate stage.

I do not find any reason to disagree with the view propagated by the learned appellate court.

This application under Article 227 of the Constitution of India being devoid of merit is not admitted and dismissed.

(Siddhartha Roy Chowdhury,J)