

S/L 6
24.7.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 1225 of 2024

Sri Sri Iswar Tarakeswar Shib Thakur Jiew
Vs.
Sri Akshay Chakraborty

Mr. Jayanta Samanta
Mr. Sayantan Hazra

...for the Petitioner.

Mr. Somnath Gangopadhyay

...for the Opposite Party.

The instant application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for declaration of title which is directed against Order No.25 dated September 27, 2023 passed by the 2nd Court of learned Civil Judge (Junior Division), Chandernagore, Hooghly in the said suit being Title Suit No.197 of 2020.

The learned Trial Judge by the order impugned has dismissed the application filed by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure praying amendment of the plaint, *inter alia* on the grounds that trial of the suit has commenced and the proposed amendment, if allowed, would change the nature and character of the suit.

On perusal of the record, it appears that the suit though has been posted for peremptory hearing but witness action has not yet commenced, as such, the trial of the suit in its true sense has not yet commenced, besides the plaintiff intends to include a further prayer for recovery of possession; inclusion of such prayer would not change the nature and character of the suit, but it is necessary for the effective disposal of the suit.

Therefore, the order impugned is set aside; the application for amendment filed by the plaintiff is allowed.

The plaintiff shall file the amended plaint **within two weeks from date**. The defendant shall be at liberty to file additional written statement within two weeks from the date of receipt of the amended plaint.

CO 1225 of 2024 is disposed of with the above observations without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Biswajit Basu, J.)