

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 38 of 2023

Smt. Bechi Rani Saha

VERSUS

Sri Subodh Adhikari and ors.

For the petitioner:

Mr. Pinaki Ranjan Mitra, Adv.

For the opposite parties:

Mr. Sounak Bhattacharya, Adv.

Mr. Souvik Das, Adv.

Mr. Saunak Mondal, Adv.

Mr. Rudranil Das, Adv.

Last Heard on: December 10, 2024

Judgment on: January 10, 2025

Biswaroop Chowdhury, J:

The petitioner before this Court is a defendant in a suit for declaration and permanent injunction and is aggrieved by the Order dated 08.07.2022 passed by Learned Additional District Judge 1st Court Howrah in Title Appeal No- 265 of 2018. Petitioner being aggrieved by the Order passed by the Learned Appellate Court has come up with the instant application under Article 227 of the Constitution of India.

The case of the petitioner/defendant in an application under order 6 Rule 17 of the Code of Civil Procedure before the Learned Appellate Court may be summed up thus:

1. The plaintiffs originally filed Title Suit No. 16298, of 2014 in the Fourth Court of Ld. Civil Judge (Junior Division) Howrah illegally, and claiming their alleged common right of passage over “C” schedule suit whereas the appellant/defendant contested the said suit by filing written statement.
2. That after contested hearing the Learned Trial Court by its Judgment dated 27-09-2018 was pleased to grant a decree in favour of the plaintiffs. The defendant being aggrieved by the said decree preferred an appeal.
3. During the pendency of the appeal the appellant/defendant engaged new set of Learned Advocate on her behalf. The appellant/defendant is the absolute owner and occupier to the extent of altogether 6.3 decimals rather the entire property comprised in R.S. and L.R. Dag No. 4947 of the said Mouza Uttar Jhapardah P.S. Domjur District – Howrah by purchase by three different registered Deed of sale being Deed No. 1962, for the year 1992. Deed No. 362 for the year 2007, and Deed No. 1362 for the year 2008, for valuable consideration from it's the then owner/occupier thereof and thus since said purchase the appellant/defendant is residing in her said purchased property including the alleged “C” schedule suit property being part and parcel

of her said residential house property to the full knowledge and exclusion of all concerned including the respondents/plaintiffs. Amongst the said three Deeds, by Deed No-362 for the year 2007, and Deed No. 1362 for the year 2008, the appellant/defendant has purchased besides the suit dag No-4947 other different quantum of property comprised in R.S. and LR Dag No-4948 of the said Mouza Uttar Jhapardah and since purchase the appellant/defendant is also enjoying the same to the full knowledge of all concerned, whereas the appellant/defendant inspite of having handed over all relevant papers and documents to her Learned Advocate on record in the trial Court the said Learned Advocate inadvertently only mentioned 3.25 decimals of landed property comprised in R.S. Dag No- 4947 appertaining to R.S. Khaitan No-2537 of Mouza Uttar Jhapardah in the written statement whereas the appellant/defendant when asked her Learned Advocate on record before the Trial Court about the matter contained in her said written statement he assured the appellant/defendant that entire property of the defendant/petitioner has been mentioned in written statement and the petitioner/defendant being an illiterate person having trusted her Learned Advocate on record proceeded accordingly in the Trial Court. However after consultation with her present Learned Advocate it is for the first time the petitioner/defendant come to know that the proper ownership and manner of possession of her said purchase of total

property measuring about 6.3 decimals comprised in suit RS Dag No. 4947 has not been stated in the written statement despite handing over all document to Learned Advocate appearing in Trial Court, when she implicitly relied and trusted upon.

4. The petitioner/defendant is the absolute owner and occupier in respect of well defined bastu property comprised in R.S. and LR. Dag No- 4947, of the said Mouza Uttar Jharpardah measuring about 6.3 decimals rather the entire property in the said Dag by virtue of the said three registered Deeds of sale being Deed No. 1962 for the year 1992. Deed No. 362 for the year 2007, and Deed No. 1362 for the year 2008 respectively and thus she is well seized and possessed of her said property by raising construction thereupon to the full knowledge and exclusion of all concerned including the plaintiffs but due to mistake of the Learned Advocate appearing in trial Court such fact was not incorporated in the written statement.

The plaintiffs/respondents/opposite parties contested the application by filing written objection.

By Order dated 08-07-2022 Learned Appellate Court was pleased to reject the prayer for amendment made by the petitioner by observing and directing as follows:

Today is fixed for hearing of application under Order 6, Rule 17, read with Section 151 C.P.C.

Parties have filed hazira. Parties are present through their respective Ld. Advocates.

Perused, heard and considered.

By filing the instant petition, the appellant-defendant has prayed for amendment of written statement referring to two sale deeds, being Nos. 362/2007 and 1362/2008 and also the acts he has performed over the properties referred to therein and also that the said property covered by the newly referred sale deeds, was being used as courtyard-cum-open space. The same has been denied by filing W.O dt. 04.03.2022 referring to the Paragraph Nos. 3. 4 and 5 of the proposed amendment application, it has been alleged that the alleged amendment is a mala fide one and will destroy (i) the valuable rights accrued by the plaintiff-respondent by dint of admission in the pleadings, (ii) admissions and evidence during trial, (iii) cause de novo trial of the suit and also nullify the Judgment and observations arrived at by the Ld. Court below on the basis of the materials in record before her. It has also been alleged that what the defendant has denied on dock before the Ld. Court below to consider and thereby drawing adverse presumption against him, can in no way be allowed to produce by this forum.

It appears from the W.S. filed by the present appellant-defendant on 22.04.2015 from Paragraph No.8 that the statement in Paragraph 2 of the plaint has been admitted and also claimed that the defendant to be absolute owner of R.S. Plot No. 4947, Khatian No. 2537 by virtue of a registered sale

deed dt. 15.09.1992 and also denied the user of C schedule by the plaintiffs, but alleged of an alternative passage at the northern side common passage of their land. In Paragraph No. 16 of the written statement which has been proposed for amendment it has been categorically stated that a piece and parcel of 3.25 decimal of land from R.S. plot no. 4947 was purchased by a deed dt. 15.05.1992 from one Panchanan Ram. It has also been stated that defendant has after such purchase, constructed residential house and has been using the same with her family members and the same being her exclusive property which forms the part of C schedule also, the plaintiffs have no right, title, interest or possession thereon. While adducing evidence by filing examination-in-chief on 03.03.2018, the defendant as D.W.1 has categorically stated "I will not file my purchase deed, I have my purchase deed at my residence. At the time of drafting my W.S., I had shown the purchase deed to my L.D. Advocate, I do not know the total area of the suit plot. I have purchased 3.25 decimal of land in R.S. plot No. 4947 and not the entire area." Thus the matter of error or wrong instruction by L.d. Senior Counsel to the defendant cannot be believed. It is rather evidently clear that the defendant has on dock before Ld. Trial Court, has boldly denied to file the document i.e. purchase deed and also that she has purchased an area of 3.25 decimal and also denied that she has purchased the entire area. Thus the proposed amendment appears to be the clear withdrawal from the admission on dock and also her denial to file any deed.

The proposed amendment, if allowed, will not only invite a de novo trial but also frustrate the Judgment which was found to be based on the evidence, documentary and oral, before the Trial Court. The documents proposed to bring in record by the intended amendment, if allowed, at this stage, the clear admission of the area and purchase deed shall be destroyed and by the same the valuable right accrued by the respondent, by admission and pleadings shall also be destroyed. Thus the proposed amendment appears not only to be against the principle laid down under Order 6, Rule 17, C.P.C. but also the principles laid down by a catena of Judgment by Hon'ble Apex Court as well as High Court. Thus the proposed amendment appears to be devoid of merit and also against the public policy.

Hence , it is,

ORDERED

That the petition is and the same be rejected with cost of Rs. 2,000/-

To 02.09.2022 for hearing.'

The petitioner being aggrieved by the Order dated 08-07-2022 passed by Learned Appellate Court has come up with this application under Article 227 of the Constitution of India.

It is the contention of the petitioner that the Learned Appellate Court acted illegally and with material irregularity in rejecting the application for amendment made by the petitioner. It is further contended by the petitioner

that the petitioner has deed in her custody which could not be brought on evidence in absence of pleading which will neither destroy the admission of the area of purchase deed nor any valuable record right of plaintiffs will be destroyed in as much as plaintiffs have claimed right of passage over the land of defendant and the learned judge acted with material irregularity in rejecting the application of the petitioner. It is also contended that the power to grant amendment of pleading is intended to serve the ends of justice and is not governed by narrow or technical limitation and the Learned Judge acted illegally in rejecting the application of the petitioner.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite parties perused the petition filed and materials on record.

Learned Advocate for the petitioner submits that the Learned Trial Court erred in refusing the prayer for amendment when the petitioner is an illiterate lady and the necessary facts were not incorporated in the pleadings due to laches of her learned advocate appearing in Trial Court. Learned Advocate further submits that amendment is necessary for deciding the material in issue. Learned Advocate also submits that the petitioner will suffer irreparable loss and injury if the amendments are not allowed.

Learned advocate for the opposite parties submits that the learned appellate court rightly rejected the prayer for amendment. Learned Advocate draws attention to the deposition of the petitioner as D.W.1 before Trial Court and submits that the petitioner has stated that she purchased 3.25 decimal of

plot no – 4947, and has no grievance against her purchase deed and she also refused to file the purchase deed. Learned Advocate further submits that the petitioner was not able to satisfy the Learned Appellate Court as to why such prayer was not made before the Trial Court. Learned Advocate also submits that if at this stage the petitioner is allowed to amend the pleadings it will cause serious prejudice to the opposite parties.

The following decisions were relied upon by Learned Advocates for the opposite parties.

Ram Niranjana Kajaria and Ors Vs Sheo Prakash Kajaria [Reported in (2015) 10 SCC-P-203]

The following unreported decision is relied upon by Learned Advocate for the petitioner

CO 972 of 2020

Smt Binapani Maity and Anr Vs Debashis Payra

Before proceeding to deal with the issue it is necessary to consider the provision with regard to amendment as provided in Order VI Rule 17 of the Code of Civil Procedure

Order VI Rule 17 of the Code of Civil Procedure provides as follows:-

17. Amendment of pleadings- The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner

and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.

In the instant case the petitioner has sought to amend the pleadings before the appellate court. Thus the petitioner has duty to satisfy the Appellate Court as to why prayer for amendment prior to commencement of trial was not made.

The petitioner in her petition for amendment has stated that although she has furnished necessary documents and instruction to her lawyer appearing in Trial Court but the same was not incorporated due to inadvertence. Now the question is whether such plea is sufficient to allow the prayer for amendment in the interest of justice

In the case of **Ram Niranjana Kajaria and others (supra)** the Hon'ble Supreme court observed as follows:

23 'Delay in itself may not be crucial on an application for amendment in a written statement, be it for introduction of a new fact or for explanation or clarification of an admission or for taking an alternate position. It is seen that the issues have been framed in the case before us, only in 2009. The nature

and character of the amendment and the other circumstances as in the instant case which we have referred to above, are relevant while considering the delay and its consequence on the application for amendment. But a party cannot be permitted to wholly withdraw the admission in the pleadings, as held by this Court in *Nagindas Ramdas v. Dalpatram Ichharam alias Brijram and others* AIR – 1974 S.C. 471 : (1974) 1 SCC-242 (1974) 2 SCR – 544. To quote paragraph – 27.

“27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be *prima facie* satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.”

The Hon’ble court further observed as follows:

21. On amendments generally, in the decision reported in *Revajeetu Builders and Developers v. Narayanaswamy and Sons and others* (2009) 13JT-366, (2009) 10 SCC 84 : (2009)15 SCR.103(2009)10 UJ-4850 after referring

to Gautam Sarup (supra), the principles on amendment have been summarized at Paragraph-63. It has been held as follows:

“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money; (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

In the case of **Mahila Ramkali Devi and Ors Vs Nandram** reported in (2015) 13 SCC P-132 the Hon’ble Supreme Court observed as follows:

20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting malafide or that by his

blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

21. In our view, since the appellant sought amendment in paragraph 3 of the original plaint, the High Court ought not to have rejected the application.

22. In the case of Jai Jai Ram Manohar Lal vs. National Building Material Supply, Gurgaon, AIR 1969 SC 1267, this Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.

23. In Pandit Ishwardas vs. State of Madhya Pradesh and Ors., reported in 1979 4 SCC-163 the Hon'ble Supreme Court observed as follows:-

4. "We are unable to see any substance in any of the submissions. The learned counsel appeared to argue on the assumption that a new plea could not be permitted at the appellate stage unless all the material necessary to decide the plea was already before the Court. There is no basis for this assumption.

5. There is no impediment or bar against an appellate Court permitting amendment of the pleadings so as to enable a party to raise a new plea. All that is necessary is that the Appellate Court should observe the well-known principles subject to which amendments of pleadings are usually granted. Naturally, one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment and, if made at the Appellate stage the reason why it was not sought in the trial court. If the necessary material on which the plea arising from the amendment may be decided is already there, the amendment may be more readily granted than otherwise. But, there is no prohibition against an Appellate Court permitting an amendment at the appellate stage merely because the necessary material is not already before the Court."

In the case of Baldev Singh and others VS Manahar Singh and Another reported in (2006) 6 SCC. P-498 the Hon'ble Supreme Court observed as follows”

‘8. It is well settled by various decisions of this Court as well as the High Courts in India that Courts should be extremely liberal in granting, the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference can be made to a decision of the Privy Council in *Ma Slue Mya V Maung MO Hnaung* in which the Privy Council observed:

All rules of Court are nothing but provisions intended to secure the proper administration of justice and it is therefore essential that they should be made to serve and be sub-ordinate to that purpose so that full powers of amendment must be enjoyed and should always be liberally excused, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject matter of the suit.”

The Hon'ble Allahabad High Court in the case of *Imtiar Ahmad V ADJ and Ors* reported in 2006(2) AWC 1190 observed as follows:

8. I have heard learned Counsel for the petitioner and Sri Srikant, learned Counsel for the respondents and have perused the record.

Order VI, Rule 17 provides amendment of the pleadings. By Amendment of 2002, a proviso has been added that amendments should generally be allowed at this stage of pre-trial of the suit. But subsequent thereto, the Court must be satisfied as to why the pleadings could not be brought in, unless it was based on subsequent developments.

The issue involved herein is being considered by the Courts every day. Amendment in the pleadings may generally be allowed and the amendment

may also be allowed at the belated stage. However, it should not cause injustice or prejudice to the other side. The amendment sought should be necessary for the purpose of determining the real question in controversy between the parties. Application for amendment may be rejected if the other party cannot be placed in the same position as if the pleadings had been originally correct, but the amendment would cause him injury which could not be compensated in terms of cost or change the nature of the suit itself as it cannot be permitted to create an entirely new case by amendment. A right accrued in favour of a party by lapse of time cannot be permitted to be taken away by amendment. Amendment can also be allowed at appellate stage. Introduction of an entirely new case, displacing even admission by a party is not permissible. (Vide *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and Ors.* ; *Nanduri Yogananda Laxminarsimhachari and Ors. v. Sri Agasthe Swarswamivaru* ; *Modi Spinning and Weaving Mills Co. Ltd. v. Ladha Ram and Co.* ; *Ishwardas v. State of M.P.* AIR 1979 SC 551 and *Mulk Raj Batra v. District Judge, Dehradun*).

10. A Constitution Bench of the Hon'ble Supreme Court in *Municipal Corporation of Greater Bombay v. Lala Pancham and Ors.* , observed that even the Court itself can suggest the amendment to the parties for the reason that main purpose of the Court is to do justice, and therefore, ,it may invite the attention of the parties to the defects in the pleadings, so that same can be remedied and the real issue between the parties may be tried. However, it should not give rise to entirely a new case.

11. In *Jagdish Singh v. Natthu Singh* , the Hon'ble Supreme Court held that the Court may allow to certain extent even the conversion of the nature of the suit, provided it does not give rise to entirely a new cause of action. An amendment sought in a plaint filed for specific performance may be allowed to be done without abandoning the said relief but amendment seeking for damages for breach of contract may be permitted.

26. In *Nagappa v. Gurudayal Singh and Ors.*, the Hon'ble Supreme Court held that amendment can be allowed even at an appellate stage in a case where law of limitation is not involved and the facts and circumstances of the particular case so demand, in order to do justice with the parties. The case involved therein had been under the provisions of Sections 166, 168 and 169 of the Motor Vehicles Act, 1988 and as the Act does not provide for any limitation for filing the claim petition, the amendment at appellate stage was allowed.

Upon considering the provision of Order VI Rule 17 of the Code of Civil Procedure and different Judicial Pronouncements it will appear that Courts should be liberal in allowing amendments unless it changes the nature of the suit or causes serious prejudice to the opposite parties. In exceptional cases prayer for amendment can even be allowed after commencement of trial or at the appellate stage.

Upon perusal of the Order dated 08.07.2022 passed by Learned Appellate Court it will appear that the Learned Court was pleased to observe that clear admission on the dock is being withdrawn. Learned Court relied on the statement of the petitioner as D.W.1. where the petitioner state that a piece and parcel of 3.25 decimal of land from R.S. plot No. 4947 was purchased by a deed dated 15.05.1992 from one Panchanan Ram.

In this regard it is to be remembered that the defendant/petitioner in reply to the statement of the plaintiff in the plaint that defendant is owner of 3.25 Decimal Bastu Land (recorded as Danga) together with structure standing thereon situated at part of R.S Dag No (4947) under R.S. Khaitan No. 2537 admitted the same in her written statement that she is the absolute owner and occupier of bastu property situated at R.S. Dag No-4947 under Khatian No-2537 of Mouza-Uttar Jhapardah by registered Deed of sale dated 15-05-1992. It is an admission to the contention of the plaintiff in the plaint. In the written statement the defendant has mentioned that she is the absolute owner of bastu property situated at R.S. Dag No. 4947 purchased by a Registered Deed of sale

dated 15-05-1992 she did not mention specifically the total area under R.S. Dag No-4947 which she owns and occupies.

As the plaintiffs in the dispute have confined their statements by contending that the defendant was owner of 3.25 Decimals Bastu Land (recorded as Danga) together with structure standing thereon the defendant was required to deal only with regard to the particular area of the bastu land and no other Land. It is in cross examination the petitioner/D.W.1 was confronted with the question whether she has purchased 3.25 decimals of plot no. 4947 and not the entire area she replied that she has purchased 3.25 decimals of plot No-4947. However the petitioner subsequently gave particulars in her cross examination that she had purchased 3 and $\frac{1}{4}$ sataks of land from Panchanam Ram of plot no. 4947 and the statement in her examination-in chief to the effect that she is the absolute owner of plot no. 4947 are both true and correct. The petitioner stated that she is the absolute owner of plot no. 4947 and also that she has purchased entire land of the said plot without specifying the area of the said plot. It is thus necessary to clarify as to how she is the absolute owner of plot no-4947 and it is for this purpose amendment of written statement by giving the details of her purchase by different deeds and producing the same are very much necessary. As plaintiff has not claimed any right of any portion of plot no-4947 of the petitioner/Defendant, by statement of the defendant that she had purchased 3.25 decimals of plot no-4947 and not the entire area no right accrues to the plaintiff with regard to the said plot. As no right accrues to the plaintiff it cannot be said that due to admission made by the defendant the defendant/petitioner cannot be refused permission to cause necessary amendments in the pleadings. It is the duty of the litigants to disclose all relevant facts before the Court and the Court has also the duty to know the relevant facts to do justice. Thus nothing can be suppressed before Court. As the defendant has not only said that she purchased 3.25 decimals of plot No. 4947 but also stated that she purchased entire plot No. 4947 production of document is necessary by amendment of written statement.

In the instant case the defendant/petitioner craved leave in written statement to produce at the time of trial all relevant documents with regard to ownership of plot no-4947 thus it is her duty to produce the said documents and for this purpose amendment of written statement is necessary to clarify and give particulars as to how and to what extent the petitioner/defendant is owner of plot no-4947.

In the case of Nellinara Jute Mills Vs Rampuria Industries reported in 2009(2) CLJ(cal) p-276 a Learned Single Judge of this Hon'ble Court while considering the decision of Ahmed Hossein V Chembelli reported in AIR 1951 Cal-262 observed that the decision in Ahmed Hossein clarifies the duty of the Court that making of amendment is not really the matter of power of a Court but its duty so that substantial justice may be done for which alone Courts exist.

It is also to be remembered that Right to Property although is not a fundamental right but a Constitutional Right in India. Thus all persons have right to enjoy their property owned by them or under their lawful possession without any undue interference by others. Thus when enjoyment of such right is obstructed by interference of others and such right is disputed or questioned the person who is prejudiced has the right to move the competent Court of Law to get his right to such property declared and protected. Thus all reasonable opportunities should be given to the litigants to prove such rights by oral or documentary evidence at any stage of proceedings. Such opportunity should ordinarily not be refused merely on the ground of delay or other technicalities. Where the ownership of property has a history and the documents are old it may not be possible to trace out all documents from which knowledge can be gathered as some documents may be misplaced. Thus in such a situation reasonable opportunity should be given for amendment of pleadings when such knowledge is obtained. It may so happen documents handed over to Advocate is not relied in Court and relied in later stage by the same advocate or by newly

engaged Advocate. In such situation also liberal view should be taken with regard to Amendment of pleadings.

In the instant case petitioner/defendant contended that she handed over all documents to her Learned Advocate with regard to ownership of plot no-4947 but the same was not incorporated, in written statement. Such contention of the defendant/petitioner cannot be disbelieved. A litigant does not benefit by not disclosing a document before his Learned Advocate and thus causing delay. It is on the basis of the Advocate's advice and litigants instruction and document, petitions are drafted. Sometimes Advocates may make mistake in not incorporating relevant document by inadvertence and sometimes they decide as to what should be relied upon. The petitioner/defendant being an illiterate old lady cannot be made to suffer for not incorporating details in the written statement and not filing all documents with regard to plot no-4947 when in the written statement such undertaking was given and leave was sought for. The acts of the petitioner/defendant is thus not mala fide.

In the facts and circumstances this Court is of the view that the impugned Order passed by Learned Appellate Court cannot be sustained and the same should be set aside.

Hence this application under Article 227 of the Constitution of India stands allowed. Order dated 8-7-2022 passed by Learned Additional District Judge First Court Howrah in Title Appeal No-265 of 2022 is set aside. The prayer for amendment made by the petitioner is allowed. Petitioner is directed to carry out the amendment within three weeks. The Learned Appellate Court shall proceed and dispose the appeal in accordance with law.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)