

M/L- 765
26/06/2025
Ct. No.-6
Aritra

C.O. 92 of 2024

**Sukumar Majhi & Ors.
Vs.
Smt. Bula Majhi & Ors.**

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das

...for the petitioner

Affidavits of service filed in Court today is taken on record.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that pursuant to the order passed by the co-ordinate Bench the copy of the civil revision application was served upon the opposite party. He further submits that prior to mentioning for upgradation, a notice was also served upon the opposite party Nos.1 and 2.

None appears for the opposite parties.

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order dated October 6, 2023 passed by the learned Civil Judge (Sr. Div.), 1st Court at Howrah in Title Suit No.117 of 2011.

By the order impugned, the application Order 6 Rule 17 of the Code of Civil Procedure for amendment of plaint stood rejected.

The petitioner filed a suit for partition and other consequential reliefs. The said suit was decreed in preliminary form by a judgment and decree dated December 1, 2014. Thereafter, the final decree proceedings in the suit for partition commenced and the Partition Commissioner was appointed. While holding the commission work it was detected by the Partition commissioner that the measurement of the suit property is 4 cottahs 8 chittaks but in the schedule of the plaint the measurement of the suit property was mentioned as 4 cottahs 30 sq. ft.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that unless the petitioner is allowed to correct the erroneous measurement of the suit property by way of amendment, complications will arise at the time of passing of the final decree.

After going through the plaint, this Court finds that in paragraph 2 thereof it has been specifically stated that the measurement of Holding No.8, Iswar Dutta Lane, is 4 cottahs and 8 chittaks. However, in the schedule of the plaint the measurement of the said property was mentioned as 4 cottahs 30 sq. ft. Therefore, there is an error in the measurement of the suit property as stated in the schedule of the plaint.

This Court finds that that the proposed amendments are necessary for the purpose of passing the final decree in the partition suit. It is no doubt true

that the petitioner ought to have been much more diligent and prompt in seeking an amendment of the plaint but the fact remains that unless the petitioner is permitted to amend the plaint there will be unnecessary complications at the time of passing of the final decree.

The Hon'ble Supreme Court in **Sajjan Kumar vs. Ram Kishan**, reported at **(2005) 13 SCC 89**, after taking note of the fact that the plaintiff in that case ought to have been diligent in promptly seeking an amendment was of the view that refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff succeeds in the suit.

In the case on hand, the preliminary decree has been passed declaring the shares of the respective parties. Neither the plaintiff nor the defendant will be prejudiced if the proposed amendments is allowed rather both the parties will be benefited if the proposed amendments are allowed as the complications while passing the final decree may be avoided.

For such reason, this Court is inclined to allow the application for amendment of plaint. Since the final decree proceeding is also proceeding ex parte and in spite of service none appears for the opposite party, and considering the nature of amendment this Court finds that there is no necessity to give liberty to the defendant to file any additional written statement.

The petitioner is directed to file amended plaint within a period of two (2) weeks from the date of receipt of a server of this order.

For the reasons as aforesaid, the impugned order stands set aside. CO 92 of 2025 stands allowed.

The petitioner will be at liberty to take all consequential steps in terms of this order.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)