

C.O. 352 of 2025

Sankar Roy
-versus-
Somenath Roy & Anr.

Mr. Kushal Chatterjee
Mr. Debrup Choudhury
... for the petitioner

Mr. Tarak Nath Halder
..for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order being no. 49 dated 15th January, 2025 passed by the learned Civil Judge, Junior Division, 1st Court, Sealdah, South 24 Parganas in Title Suit no. 518 of 2018.

By the order impugned the application filed by the petitioner praying for amendment of plaint stood rejected.

Mr. Chatterjee, learned advocate appearing for the petitioner submits that in course of evidence the defendant no.1 has produced a sale deed dated 14th March, 1977.

After going through the recitals of the said deed the newly appointed learned advocate advised the petitioner to file an application for amendment of plaint. He submits that by way of amendment the plaint, the petitioner herein is trying to elaborate the case already made in the plaint

which has been amended once. He submits that there is a discrepancy in the number of the premises as mentioned in the deed and that in the schedule of the plaint.

Mr. Halder, learned advocate appearing for the opposite parties submits that the property has been renumbered which has been admitted by the plaintiff in paragraph 1 of the plaint as well as in the schedule of the plaint. He submits that the suit is at the stage of argument and the petitioner is trying to protract the litigation by filing a frivolous application for amendment of plaint.

Heard the learned advocates for the parties and perused the materials placed.

It is not in dispute that the application for amendment has been filed after the commencement of trial. Proviso to Order 6 Rule 17 of the Code of Civil Procedure states 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. It has been stated in the said application that the newly appointed advocate after perusing the plaint and the documents which are on record have detected certain facts which are necessary for the purpose of deciding the real controversies between the parties. As rightly held by the learned trial judge that engagement of a new advocate cannot be a ground for

allowing an application for amendment of plaint after the commencement of trial. The learned trial judge took note of the several decisions of the Hon'ble Supreme Court and the High Courts and held that the petitioner could not make out a ground for entertaining the application under Order 6 Rule 17 after the commencement of trial. The learned trial judge rightly observed that if the application under Order 6 Rule 17 is allowed at the stage of argument it would amount to taking away the defence which has already accrued in favour of the defendants.

The learned trial judge further recorded that the petitioner herein has sought to dispute the title of the predecessor in interest of the plaintiff and the defendant by way of amendment. It is well settled that a party cannot be allowed to make out a third case by filing an application for amendment.

For all the reasons as aforesaid, this Court is not inclined to interfere with the order impugned.

C.O. 352 of 2025 accordingly stands disposed of.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)