

Item No. 2  
14.11.2025  
Court. No. 6  
GB

C.O. 362 of 2025

Bimal Giri & Ors.  
Vs.  
Narendra Nath Khatua & Ors.

*Mr. Probal Kumar Mukherjee,  
Ms. Shebatee Datta*

*...for the Petitioners.*

*Mr. Rabindranath Mahato,  
Mr. Aritra Shankar Ray*

*...for the Opposite Parties.*

1. The petitioners are the defendants in Title Suit No.188 of 2015. The petitioners have assailed an order dated January 16, 2025. The petitioners filed an application under Order 8 Rule 9 of the Code of Civil Procedure and sought for permission to file an additional written statement in order to bring on record relevant materials which, according to the petitioners would have a bearing on the ultimate decision in the suit.
2. The learned court rejected the said application on the ground that by an order dated August 2, 2016, the court recorded that the defendants had submitted that they did not wish to file any additional written statement. Thereafter, the suit was fixed for peremptory hearing. The application was filed after four years from the filing of the last amended plaint. The petitioners tried to explain the delay, inter alia, stating that the learned erstwhile advocate had passed away and they were not advised to file the additional written statement.

3. Relying on the provisions of Order 8 Rule 9 of the Code of Civil Procedure, the court exercised discretion, inter alia, holding that the application was not to be entertained as the same did not ensure substantial justice between the parties. The petitioners should not be allowed to retract from the admission in the written statement by changing their entire pleading. There was a stage to invoke the particular provisions of the Code of Civil Procedure and ensuring substantial justice would not mean that amendments or filing of additional written statements could be allowed endlessly.
4. Relying on the decision of ***Novartis AG & Anr. versus Nacto Pharma Ltd.***, it was observed that unless due diligence could be proved, the prayer for filing additional written statement should be disallowed. The written statement was filed on June 20, 2014 and the defendants had categorically stated that their predecessor purchased the western portion of the land, whereas the plaintiffs' predecessor purchased the eastern portion.
5. The petitioners wanted to incorporate contrary facts that the plaintiffs had purchased the northern portion and the defendants were in possession of the southern portion. They also wanted to make out a case that, their purchase deed incorrectly mentioned the boundaries. The learned court was of the view that, as the petitioners were in possession of the properties

through their predecessors who had purchased the same and thereafter, they were always aware of the portion that they were possessing and cultivating. It could not be accepted that the defendants were unaware of the portion of the plot that they were enjoying and suddenly discovered such discrepancy at the fag end of the suit.

6. According to the learned court, allowing the written statement would vitiate the entire suit. By filing the additional written statement, the petitioners wanted to challenge the purchase deed of the plaintiffs' predecessor. In the guise of filing of an additional written statement the petitioners were trying to incorporate inconsistent pleas and also withdraw the admission in the written statement. The learned court was of the view that the petitioners could not be waiting for more than eight years to bring in such facts on record, which were not subsequent events. They waited for the evidence of the plaintiffs to be over and after the cross-examination of the plaintiffs was closed, did they come up with an additional written statement, thereby incorporating facts which were totally alien to their earlier written statement.
7. Mr. Mukherjee, learned senior advocate submits that under wrong advice, the additional written statement could not be filed although, the plaint was amended three times and lastly in 2020. According to Mr. Mukherjee, the additional written statement should

be accepted as the evidence of the defendants is yet to be completed. The plaintiffs always had a right of cross-examination on the newly incorporated facts. The plaintiffs' witnesses can also be recalled. Thus, the additional written statement should be allowed, for adjudication of the dispute in its entirety.

8. I have considered the rival contentions of the parties.

I do not find that the contents of the additional written statement which was sought to be filed before the court, was in answer to the amended plaint. I do not find that by the amendment of the plaint in 2020, the plaintiffs had brought on record new facts, which required filing of the additional written statement. The additional written statement was a complete retraction from the pleadings and averments in the original written statement. It is true that an amendment to a written statement or filing of an additional written statement should be liberally considered by courts, but such liberal approach cannot cause injustice to the plaintiffs who had already sought to prove their case by adducing evidence. After the evidence of the plaintiffs were closed, the petitioners filed the application with a complete set of new facts, totally contrary and inconsistent with what had been pleaded in their written statement. The case of the plaintiffs had always been consistent. There was no deviation in the plaint case, which necessitated that, further denials or

additional pleadings or documents were required to be espoused through an additional written statement. The plaint case in the unamended plaint is quoted below:-

*"2. That the Suit property previously belonged to one Anandamoni Das, w/o Madhu Das of Vill Dakshin Patna. The Suit Plots measures 1.02 Acre in total Anandamoni Das by registered sale deed Dt 25.03. 1968 sold out and transferred the Eastern half of the Plot No 3445 measuring 51 Dec. unto the Plaintiff No.1 and delivered possession of the same unto the Plaintiff No.1 and from The date of such purchase the Plaintiff No 1 has been possessed the Suit property by regular cultivation of paddy by growing paddy and harvesting paddy there.*

*3. That subsequently during the possession of the Suit property by the Plaintiff No. 1 a narrow pathway has been created from South East corner to Northern arm of the Suit property. The said pathway is 152 link long and 20 link wide The said pathway is necessary for the personal use of the Plaintiff only and one else.*

*4. That one Balaram Giri purchased the Western half of the Suit Plot from the said Anandamoni Das and he possessed all along the Western 51 Dec. of the Suit Plot and nothing more. That in the present L.R.R.O.R. a batta Plot has been created by State of West Bengal numbering 3445/5212 and total land in the batta Plot has been shown 13 Dec. out of which 06 Dec has been shown in the name of the Plaintiff and 07 Dec. has been shown in the name of said Balaram Giri and in the main*

*Plot No. 3445, an area of 42 Dec. has been shown in the name of the Plaintiff and also an area of 42 Dec. has been shown in the name of said Balaram Giri. The said pathway is exclusively within the Eastern 51 Dec. of the Suit Plot and not in the Western 51 Dec. of the Suit Plot Balaram Giri did not purchase any portion of the Eastern 51 Dec and he never possessed the Eastern 51 Dec of the Suit Plot and there is no scope or reason for record in the name of the Balaram Giri in respect of the batta Plot No. 3445/5212 The said total 13 Dec. of land in batta Plot No.3445/5212 ought to have been recorded in the name of the Plaintiffs. The Plaintiff No 1 has sold out and transferred specifically demarcated 06 Dec. of land from the Suit Plot No 3445/5212 in favour of Sri Ganesh Chandra by a registered sale Deed No. 1384/2002.*

*5. This Plaintiff by another registered sale Deed No 2881/2012 as sold out and transferred specifically demarcated 06 Dec of land from the Suit Plot No. 3445 in favour of Sri Benu Jana and Sri Phani Bhushan Jana. They are in possession of the same. They are Plaintiffs Nos. 2 and 3 of this Suit. Another purchaser Ganesh Chandra Chanda has been made Pro forma Defendant in the instant Suit and no relief has been prayed against him The cap but the Plot Number 3445/5212 has been carved out from the Eastern portion of the original plot. The principal Defendants Nos. 1 to 4 do not have any manner of right or title or possession or claim over the Eastern 50% of the A schedule suit property.*

*6. That the settlement authority has no right to record the land of the Plaintiff in the name of Balaram Giri The acts of the*

*Defendants State of West Bengal and B.L & L.R.O. are illegal, unauthorised no without jurisdiction and they have no right or authority to create such passage through over the land of the Plaintiff. No member of public passes through over the pathway on the Suit land. It is only for the use of the Plaintiff alone. During the cultivation season and rainy season the said pathway in the Suit property is submerged by water and cultivation is done. That is why State of West Bengal and BL & LRO have been impleaded in this Suit.*

*7. That the said Balaram Giri is no more now and the present Defendant Nos. 1 to 4 are the sons and daughters of Balaram The Defendants also threatened on 24.09.2012 to dispossess the Plaintiff from the Suit property thereby giving rise to the cause of action for the instant Suit.*

*8. That the Defendant Nos. 1 to 5 have no right, title, interest over the Suit property They cannot threaten to dispossess the Plaintiff from the Suit property.”*

8. By the amendment there was further elaboration which is quoted below:-

*"3. That subsequently during the possession of the Suit property by the Plaintiff No. 1 a narrow pathway has been created from South East corner to Northern arm of the Suit property. The said pathway is 152 link long and 20 link wide. The said pathway is necessary for the personal use of the Plaintiff only and one else.*

*4. That one Balaram Giri purchased the Western half of the Suit Plot from the said Anandamoni Das and he possessed all along*

*the Western 51 Dec of the Suit Plot and nothing more.*

*5. That in the present L.R.R.O.R. a batta Plot has been created by State of West Bengal numbering 3445/5212 and total land in the batta Plot has been shown 13 Dec. out of which 06 Dec. has been shown in the name of the Plaintiff and 07 Dec. has been shown in the name of said Balaram Giri and in the main Plot No. 3445, an area of 42 dec. has been shown in the name of the Plaintiff and also an area of 42 Dec. has been shown in the name of said Balaram Giri. The said pathway is exclusively within the Eastern 51 Dec. of the Suit Plot and not in the Western 51 Dec. of the Suit Plot Palaram Giri did not purchase any portion of the Eastern 51 Dec. and he never possessed the Eastern 51 Dec. of the Suit Plot and there is no scope or reason for record in the name of the Balaram Giri in respect of the batta Plot No 3445/5212. The said total 13 Dec of land in batta Plot No. 3445/5212 ought to have been recorded in the name of the Plaintiffs. The Plaintiff No. 1 has sold out and transferred specifically demarcated 06 Dec of land from the Suit Plot No 3445/5212 in favour of Sri Ganesh Chandra by a registered sale Deed No. 1384/2002 This Plaintiff by another registered sale Deed No. 2881/2012 has sold out and transferred specifically demarcated 06 Dec. of land from the Suit Plot No.3445 in favour of Sri Benu Jana and Sri Phani Bhushan Jana. They are in possession of the same.*

*6. That the settlement authority has no right to record the land of the Plaintiff in the name of Balaram Giri. The acts of the Defendants State of West Bengal and B.L. &*

*L.R.O. are illegal, unauthorised and without jurisdiction and they have no right or authority to create such passage through over the land of the Plaintiff No member of public passes through over the pathway on the Suit land It is only for the use of the Plaintiff alone. During the cultivation season and rainy season the said pathway in the Suit property is submerged by water and cultivation is done. That is why State of West Bengal and BL. & L.R.O. have been impleaded in this Suit.*

*7. That the said Balaram Giri is no more now and the present Defendant Nos. 1 to 4 are the sons and daughters of Balaram The Defendants also threatened on 24.09.2012 to dispossess the Plaintiff from the Suit property thereby giving rise to the cause of action for the instant Suit.*

*8. That the Defendant Nos. 1 to 5 have no right, title, interest over the Suit property. They cannot threaten to dispossess the Plaintiff from the Suit property.”*

9. There does not appear to be any additional factual assertions, but only elaborations of the existing averments. Moreover, I agree with the learned trial judge that the petitioners who were in possession through their ancestors, since purchase, were adequately aware of the portion of the land that they were occupying. The plaint case can be demolished by leading evidence and cross examination of the plaintiffs have been done. Moreover, the fact that the boundaries of the deeds of purchase of the predecessor of the petitioners were incorrect, cannot

be now inserted by an additional written statement at the fag end of the trial.

10. This is not a case in which, despite due diligence, the petitioners were unable to gather information or materials at the time of filing the written statement. They have not come into possession of such information after the evidence of the plaintiffs closed. The additional written statement cannot be accepted to fill up the lacuna in the defence case or to rebut what has come out in the evidence of the plaintiffs. The attempt at filing the additional written statement is malafide and will cause delay in disposal of the suit. In fact, it will lead to a retrial.
11. Under such circumstances, the revisional application is dismissed.
12. Parties are to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**