

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

C.O. 424 OF 2025

MERATUN BEWA AND ORS.

VERSUS

TAJMIRA BEWA AND ORS.

For the Petitioners : Mr. Shabana Hasin, Adv.

For the Opposite Party

no 1 & 2,3 and 7 : Mr. Partha Pratim Roy, Adv.
Mr. Anirban Das, Adv.

Last Heard on : 22.05.2025

Judgement on : 18.06.2025

CHAITALI CHATTERJEE DAS, J.:-

1. This civil revisional application is directed against an order dated September 18 2024, passed by learned, Civil Judge, Junior Division, 2nd court, Jangipur, Murshidabad in O.S No 4 of 2019 whereby the application filed under Order 6 Rule 17 of the Code of Civil Procedure was rejected.
2. The present petitioner filed a suit for permanent injunction alleging that late Abdul Sattar was the actual owner of the piece and parcel of the schedule property and after his demise, his wife, sons and daughters, the plaintiffs in the suit, became the joint owners of all his property along with one Tajmira Bewa and her sons and daughters, that is the defendants/Opposite Parties.

- 3.** It is the case of the petitioners that both the plaintiffs and the defendants are the legal heirs of late Abdul Abdul Sattar as per Muslim law of inheritance, but the Opposite Party/Defendant No.1 and 2 being the influential persons of the society took all the papers and documents in their custody and transferred illegally many of such properties to 3rd parties, behind the back of plaintiffs.
- 4.** It is the further case of the plaintiff/petitioners that on 24 April 2024 the plaintiffs filed an application under Order 6 Rule 17 of Code of Civil Procedure praying for amendment of plaint, for incorporating certain facts which are necessary for proper adjudication of the case. The learned court after hearing both the parties rejected the prayer for amendment holding that the sale deed number 2671 of 2004 dated 8.7.2004 is not an admitted document. The purpose of incorporation of such fact as submitted before this court by the learned advocate was necessary to decide the dispute in question and to compare the thumb impression of late Abdul Sattar with the Sale deed number 2671 of 2004 dated 8.7.2004 .
- 5.** It is argued that the trial court while deciding matter for amendment of plaint, should not delve into the merits of the case. If it is found that the proposed amendment is formal in nature and will not change the nature and character of the suit and will not prejudice the defendants and or it is necessary for proper adjudication of the dispute, the court can exercise the discretion to allow such prayer. It is further submitted the purpose of allowing the amendment is to avoid the multiple of the proceeding, but the learned trial court considered the merit of the original proceeding and rejected the prayer of the petitioner. In order to substantiate her contention,

the learned advocate has relied upon a decision reported in¹ (Rajesh Kumar Agarwal and others versus KK Modi and others).

6. The Learned Advocate appearing on behalf of the Opposite Party on the other hand raised vehement objection regarding maintainability of the application before the learned court for amendment of the plaint after commencement of trial. It is submitted that on previous occasion, also the plaintiffs tried to compare the signature of Abdul Sattar by filing various petitions and the Opposite Party denied the knowledge of execution of such Sale Deed number 2671 of 2004 dated July 8, 2004 and also submits that the said document is not an admitted document. So comparison of thumb impression cannot be done with such sale deed, and on that ground, the amendment cannot be allowed.

7. It is a settled law that amendment can be allowed at any stage if it is found that the amendment is required for proper adjudication of the dispute in question and if right of parties are not prejudiced for incorporating such facts. In the decision as relied upon by the learned advocate, in Rajesh Kumar Agarwal and others (Supra), The Hon'ble Supreme Court also observed that there are two parts to the application under Order 6 Rule 17, which are directory and mandatory. In that case it was further observed that the court should allow all amendments that may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side. The real controversy test is the basic or cardinal test and it is the primary duty of the court, to decide whether such an amendment is necessary to decide the real dispute

¹ (2006) 4 SCC 385

between the parties. It was further observed that court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to sub serve the ends of justice.

- 8.** In the above judgement, the Hon'ble Supreme Court further held that court should not go into the correctness or falsity of the case in the amendment, on merits of the case at the stage of considering the prayer for amendment. The Learned Trial Court took note of the decisions reported in² *Revajeetu Builders and Developers v Narayana Swamy & and sons and Ors.* and came to a finding that the amendment was to insert the fact of sale deed number 2671 of 2004 dated July 8, 2004 for the purpose of comparing the thumb impression of Abdul Sattar with it, but the said deed was executed in favour of third-party and is not an admitted document. Therefore, the document is not at all necessary documents in order to decide the dispute in question as no fruitful result would come, if the amendment is allowed.
- 9.** In the relevant provision, under Order 6 Rule 17 of the Code of Civil Procedure, it is specifically provided that "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. The court is to

² (2009) 10 SCC 84

consider whether the petitioner provided sufficient grounds for amendment and whether the delay in filing the petition affects their claim”.

10. Therefore the first part of the relevant provision empowers the court to exercise discretion to order amendment of pleading at any stage of the proceedings. But the second part is imperative, that is, when the same is necessary for the purpose of determining the real question in controversy between the parties. In this case, at the outset the amendment application was filed after the trial has commenced without any reason. Secondly, the incorporation of such amendment primarily appears to be not necessary to determine the real question in controversy as the suit was filed for declaration that the deeds executed are all forged and on false personification. The said deed is of the year 2004 when the suit filed in the year 2019 and the plaintiffs are alleging forgery and impersonation, so it is essential to understand their basis of such claim. The key issue is that the petition lacks crucial details such as, when the petitioner became aware of the deed in question and why the deed is necessary for proper adjudication when filing suit for declaration of certain deed as forged and on false impersonation.

11. On perusal of the order, it is seen that the date of the case is fixed for peremptory hearing as last chance, which obviously suggest that the trial has commenced though the evidence has not yet started. The petition filed by the plaintiff appears to be very cryptic without mentioning any cogent reason or explanation as to why such amendment has to be incorporated at a belated stage, and as to why the plaintiff did not file such application much earlier, when on the similar point, he filed other applications for

comparison of the thumb impression of deceased Abdul Sattar in respect of the deed is 2671 of 2004.

12. The submission advance by the petitioner that the Learned Court has entered into the merit of discussion also cannot be accepted since the learned Court has discussed the purpose of amendment for proper adjudication.

13. Therefore in view of the above discussion this Court finds no merit in this revisional application and accordingly the same is liable to be rejected.

14. Hence this revisional application is dismissed.

15. No order of costs.

16. Urgent Photostat certified copy of the Judgement if applied for be given to the parties of priority basis.

(CHAITALI CHATTERJEE DAS, J.)