

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 476 of 2025

Shiba Prasad Chowdhury @ Sibaprasad Chowdhury & Ors.

Vs.

Biswanath Bag & Ors.

For the Petitioner	: Mr. Saptansu Basu, Mr. Rabindranath Mahato Mr. Aritra S. Roy advocates
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For the Opposite Party	: Mr. Tapas Kr. Dey Mr. Snehasis Jana ...advocates
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Heard on	: 02.07.2025
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Judgment on	: 08.07.2025
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Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an Order being no. 17 dated January 18, 2025 passed by the learned Single Judge (Junior Division) 3rd Court at Medinipur, District Paschim Medinipur in Title Suit No. 207 of 2020.
2. By the order impugned, the application for amendment of plaint and the temporary injunction are allowed subject to payment of cost.

3. The opposite parties herein filed a suit for declaration of title and permanent injunction. It is the specific case of the opposite parties in the plaint that Jyotindranath Bag and Motindranath Bag, were the exclusive owners of A schedule property. After the death of Jyotindranath Bag, his brother namely, Motindranath Bag became the exclusive owner of the A schedule property. Motindranath Bag died in the year 1983, leaving behind him surviving plaintiff nos. 1 to 4 and one Sambhunath Bag (since deceased) as his legal heir and heiresses. After the death of Motindranath Bag the plaintiff nos. 1 to 4 and Sambhunath Bag (since deceased) became the owners of A schedule property by virtue of inheritance. Sambhunath Bag died in the year 2019 leaving behind him surviving the plaintiffs and defendant nos. 2 to 5 as his only heirs. Upon the death of Sambhunath Bag the defendant nos. 2 to 5 inherited the share of their father in the A schedule property. While the plaintiffs were exercising their right, title and interest and possession over A schedule property according to their shares by way of specific demarcation, the defendant no. 1 entered into the A schedule suit property on 22.06.2020 with some anti-social elements in the locality and started the measurement work. Upon enquiry the defendant no. 1 disclosed that Sambhunath Bag transferred the entire A schedule property in favour of the defendant no. 1 by a registered deed of sale. The plaintiff has further alleged that the defendant no. 1 threatened to dispossess the plaintiffs from the A schedule suit property by force which compelled them to file the instant suit. The opposite parties have prayed for declaration of their right, title, interest and possession in respect of A schedule property

and for permanent injunction restraining the petitioner from disturbing the peaceful possession of the opposite parties over the A schedule property.

4. The suit property which has been described in schedule A to the plaint comprises of plot nos. 19, 20, 21, 22 and 23 within Mouza Maliara, J.L no. 176 CS Khatian no. 21/1 under Police Station Medinipur in the District of Paschim Medinipur.
5. The defendant/ petitioner no. 1 herein is contesting the said suit by filing a written statement denying the material allegations contained therein. The specific case made out by defendant no. 1 in the written statement is that his mother namely, Kiran Bala Chowdhury alias Kiran Bala Dasi purchased the suit plots by virtue of Sale Certificate being no. 21/ 1941 dated 19.07.1941. It has been further stated in the written statement that the name of the mother of the defendant no. 1 was recorded in the finally published R.S. and L.R. Record of Rights. It has been further stated therein that one Ashok Kumar Patra filed a Title Suit No. 103 of 1982 against Kiran Bala Dasi and the said suit was decreed on 21.11.1995 in favour of Ashok Kumar Patra in respect of suit plot nos. 19, 20, 21 and 22 measuring about 1.58 acres. The second appeal is pending before the Hon'ble High Court at Calcutta at the instance of the heirs of the Kiran Bala Chowdhury. It was further stated therein that the one Joydeb Patra filed a Title Suit No. 81 of 1983 against Kiran Bala Chowdhury in respect of suit plot no. 23.
6. The petitioner nos. 2 to 5 herein are contesting of the said suit by filing a joint written statement denying the material allegations contained therein. It is the specific case of the said defendants in the written statement that

Motindranath Bag sold the suit plot no. 23 and other non-suit plot nos. 24 and 33 by a registered deed of sale dated 6th July, 1978 being sale deed no. 4129/ 1978 to one Joydeb Patra. Motindranath Bag also transferred suit plot nos. 19, 20, 21 and 22 to one Ashok Kumar Patra by a registered deed of sale dated 6th July, 1978. The fact of filing of Title Suit No. 103 of 1982 by Ashok Kumar Patra and Title Suit No. 81/ 1983 by Joydeb Patra against Kiran Bala Chowdhury has also been stated in the said written statement.

7. The opposite parties herein filed an application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of plaint and for amendment of injunction application. The opposite parties herein sought to challenge the Sale Certificate being no. 21/1941 dated 19th July, 1941 by virtue of which Kiran Bala Chowdhury purchased the suit plots on the ground that the then Jamindar never filed any suit against Motindranath Bag and Jyotindranath Bag claiming arrear rent and no decree was passed against them and as such there was no question of auction sale. The opposite parties alleged that the Sale Certificate in the name of Kiran Bala Chowdhury is a fraudulent document and by such document Kiran Bala Chowdhury did not acquire any title in respect of the suit property.
8. The opposite parties also sought to challenge the sale deed nos. 4129/ 1978 and 4130/ 1978 alleged to have been executed in favour of Joydeb Patra and Ashok Kumar Patra on the ground that both of them being cunning and greedy persons have procured these deeds by way of false personation and for such reason the said deeds are not binding upon the plaintiffs. The opposite parties sought for a declaration that the sale deeds in respect of the

A schedule property is illegal, void and not binding upon the plaintiffs. The learned Trial Judge allowed the application for amendment of plaint and the injunction application.

9. Mr. Basu Learned Senior Advocate appearing in support of the civil revision application submitted that the opposite parties had the knowledge of the Sale Certificate of the year 1941 and the sale deeds of the year 1978 at the time of the filing of the said suit. Mr. Basu further referred to the averments made in the plaint of a suit for partition being Title Suit No. 923 of 2016 filed by the opposite party nos. 1, 2 and 3 herein in support of his contention that the opposite parties had the knowledge of the deeds which they are now seeking to challenge. He contended that the proposed amendments are ex facie barred by limitation and, therefore, the same could not have been allowed. In support of such contention Mr. Basu placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Van Vibhag Karmchari Griha Nirman Sahkari Sanstha Maryadit (Registered) vs. Ramesh Chander and Ors.*** reported at ***(2010)14 SCC 596*** and ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another*** reported at ***(2022) 16 SCC 1.***
10. Mr. Dey learned advocate appearing for the parties seriously disputed the contention made by Mr. Basu. He contended that after the defendants have disclosed about the Sale Certificate and the sale deeds in their respective written statements, the plaintiffs/ opposite parties herein came to know of such documents. He submitted that immediately thereafter the opposite parties sought to challenge the Sale Certificate and the sale deeds by filing

the application for amendment of plaint and the injunction application. He further contended that unless the proposed amendments were allowed, the opposite parties would suffer irreparable loss and injury. He further contended that an application for amendment of plaint should be construed liberally.

11. Heard the learned advocates for the parties and perused the materials placed.
12. From the schedule of the amendment application it appears that the plaintiff has sought to challenge the execution of the sale deeds being no. 4129/ 1978 and 4130/ 1978 executed in favour of Joydeb Patra and Ashok Kumar Parta respectively.
13. The case made out in the plaint is that the plaintiffs and the defendant nos. 2 to 5 are the exclusive owners of the A schedule property and that the defendant no. 1 is an anti-social and land mafia, who is trying to dispossess the plaintiffs from the A schedule property.
14. The defendant no. 1 is claiming title to the suit property by virtue of the Sale Certificate being no. 21/ 1941 dated 19th July, 1945 in favour of Kiran Bala Chowdhury alia Kiran Bala Dasi who is the mother of the defendant no. 1.
15. The opposite party sought to challenge the said Sale Certificate on the ground that the question of holding auction of the suit property and the issuance of the Sale Certificate in the name of Kiran Bala Chowdhury does not arise. The opposite parties have also prayed for declaration that the Sale

Certificate in respect of A schedule property is illegal, void and not binding upon the plaintiffs.

16. After going through the plaint and the application for amendment of plaint, this Court is of the considered view that the proposed amendment insofar as it relates to the Sale Certificate issued in favour of Kiran Bala Chowdhury is concerned and the relief sought for in that regard are necessary for the purpose of deciding the real controversies between the parties. The learned Senior Advocate for the petitioner could not demonstrate that the amendment sought for in respect of the Sale Certificates is ex facie barred by limitation.
17. The cause of action for filing the instant suit is that the defendant no. 1 entered into the suit property to do measurement work and threatened to dispossess the plaintiffs from the suit property.
18. The Hon'ble Court in ***Sanjeev Builders Private Limited*** (supra) held that where the amendment changes the cause of action so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed.
19. By way of proposed amendment, the plaintiffs also sought to challenge the validity of the sale deeds alleging that the same were procured by Joydeb Patra and Ashok Kumar Patra by false personation. The plaintiffs sought to make out a new case by way of amendment for which there is not the slightest basis in the original plaint. To the mind of this Court, the proposed amendment relating to the sale deeds would result in fundamental

alteration of the pleadings and the lis would assume a complexion thereby enlarging the scope of the suit for the reasons as stated hereinafter.

20. The opposite parties sought for a declaration that the said sale deeds are alleged to have been executed in favour of Joydeb Patra and Ashok Kumar Patra are illegal, void and not binding upon the plaintiffs. Such a declaration could not have been sought for in the instant suit as the persons in whose favour right, title and interest was created by virtue of the sale deeds are not parties in the instant suit. The proposed amendment would result in bringing a dispute between the plaintiffs and third parties within the ambit of the instant suit.
21. That apart, the learned advocate for the opposite parties did not dispute the fact that the plaintiffs filed a suit for partition in the year 2016 and in the plaint of the said suit the plaintiffs have admitted having obtained the certified copy of the sale deeds. Thus, it is not in dispute that the plaintiffs had the knowledge of the said sale deeds since the time of filing the suit for partition. However, the plaintiffs did not challenge the sale deeds at the time of filing the instant suit and the cause of action of the instant suit was entirely different.
22. Now, this Court has to consider whether the application for amendment of plaint is barred by limitation.
23. The learned Trial Judge was of the view that whether the suit is hit by the provisions of Article 59 of the Limitation Act is a mixed question of law and fact.

24. Article 59 of the Limitation Act prescribes the period of limitation for suits to cancel or set aside an instrument or decree or for rescission of a contract. The period of limitation for such suits is three years and the time from which such period shall begin to run is when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him.
25. Article 58 deals with the period of limitation for suits to obtain any other declaration and the period of limitation is three years when the right to sue first accrues.
26. The period of limitation is three years in case of suits falling under Article 58 and 59.
27. By way of proposed amendment the plaintiffs sought for a declaration that the sale deeds are null and void and have not prayed for cancellation of the deeds. The said deeds came to the knowledge of the plaintiffs more than 3 years prior to the filing of the suit and the right to sue insofar as the said deeds are concerned also accrued more than 3 years prior to the filing of the instant suit.
28. For the reasons as aforesaid, this Court is of the considered view that the declaration that the sale deeds are void as sought for by way of proposed amendment was barred by limitation at the time of filing the instant suit.
29. The Hon'ble Supreme Court in ***Sanjeev Builders Private Limited*** (supra) held that the prayer for amendment is to be allowed if the amendment is required for effective and proper adjudication of the controversy between the

parties provided the amendment does not raise a time barred claim, resulting in divesting of the other side a valuable accrued right.

30. In **Ramesh Chander** (supra) it was observed that the prayer for amendment for incorporating a time barred claim even though allowed cannot relate back to the date of filing of the suit to cure the defect of limitation. It is thus, well-settled that a time barred claim cannot be allowed.
31. By applying the aforesaid proposition of law, this Court holds that the challenge to the sale deeds had already become barred by limitation. For such reason, the amendment challenging the sale deeds could not have been allowed.
32. For the reasons as aforesaid, the civil revision application stands allowed in part. The impugned order allowing the application for amendment of plaint and the injunction application insofar as the sale deed no. 4129/ 1978 and 4130/1978 are concerned and the reliefs claimed in respect thereto stands set aside.
33. It is, however, made clear that the impugned order allowing the amendment insofar as it relates to the issuance of Sale Certificate no. 21/1941 dated 19.07.1941 is not interfered with by this Court. The portion of the impugned order directing payment of cost as a condition for allowing the application for amendment of the plaint and the injunction application is also not interfered with by this Court.
34. The opposite parties are directed to pay the cost as directed by the impugned order within a period of fortnight from the receipt of a server copy

of this order, if not already paid and file the amended plaint and the amended temporary injunction application in terms of this order within the period of two weeks from the date of receipt of a server copy of this order. If, the cost is not paid within the time limit as indicated hereinbefore, the amended plaint and the amended temporary injunction application shall not be accepted by the learned Trial Judge.

35. Petitioners will be at liberty to file additional written statement and additional written objection to the injunction application within a period of two weeks from the service of the copy of the amended plaint and the amended injunction application respectively.
36. There shall be, however, no order as to costs.
37. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)