

C.O. 689 of 2025

Samaun Mondal (Babu) & Anr.

-versus-

Samim Hossain & Anr.

Mr. Uday Narayan Betal

Mr. Atreya Chakraborty

Mr. Mriganka Patra

... for the petitioners

Ms. Manali Biswas

..for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the defendant who is the appellant in Title Appeal No. 74 of 2017 and is directed against an order being no. 26 dated December 6, 2024 passed by the learned Additional District Judge-cum-Judge, Special Court (E.C. Act), Berhampore, Murshidabad in Title Appeal No.74 of 2017.

By the order impugned the application for amendment of the written statement at the appellate stage stood rejected.

Mr. Chakraborty, learned advocate appearing for the petitioners submits that the petitioners sought to elaborate the case made out in the original written statement by way of amendment. He submits that the defendant is entitled to take an additional plea by way of

amendment. Such attempt on the part of the defendants/petitioners herein to incorporate the additional fact has been turned down by the learned trial judge.

Mr. Chakraborty further submits that an application for amendment of pleading more particularly the written statement is to be construed very liberally and the amendment can be allowed at any stage of the proceeding and even at the appellate stage. In support of such contention, he placed reliance upon a decision of the Hon'ble Supreme Court in the case of Baldev Singh Vs. Manohar Singh reported in AIR 2006 6 SCC 498.

Mr. Chakraborty further refers to a decision of the Hon'ble High Court at Orissa in the case of Kashi vs. Paramananda reported in AIR 1985 (Ori) 260 in support of the contention that alternative plea can be taken in written statement.

Per contra, Ms. Biswas, learned advocate appearing for the opposite parties submits that the petitioners by way of amendment of plaint are trying to take a new plea at the appellate stage.

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

In the original written statement the petitioners have claimed their right title and interest in respect of the suit property by virtue of a deed of gift. The opposite party challenged the title of the donor of the petitioners herein before the learned trial judge.

By way of amendment the petitioners herein sought to incorporate a new paragraph as 7'Ka' after paragraph 7 of the original written statement. After going through the schedule of amendment this Court finds that the petitioners herein are trying to take a new line of defence by way of amendment by claiming title by way of adverse possession. It is well settled that an amendment of written statement should not be allowed to take a new line of defence by the defendant. At this stage it would be relevant to point out that the original case made out by the petitioners in the written statement was that he acquired title by virtue of registered instruments through his father who is since deceased.

In Baldev Singh (supra) the Hon'ble Supreme Court after noticing the proviso to Order 6 Rule 17 of the Code of Civil Procedure interpreted the expression "commencement of trial" to mean the final hearing of the suit, examination of witnesses, filing of documents

and addressing of arguments”. In the facts of the said reported case the Hon’ble Supreme Court noted that the parties were yet to file the documents in the said suit. On the basis of such factual finding the Hon’ble Supreme Court was of the view that proviso to Order 6 Rule 17 does not stand attracted to the said reported case. However, in the case in hand the application for amendment was filed at the appellate stage. Therefore, proviso to Order 6 Rule 17 shall stand attracted to the case on hand. The petitioner has not given any explanation as to why the petitioner could not file the application for amendment prior to the commencement of trial.

In Kashi (supra) it was held that an alternative and inconsistent plea can be taken in the written statement provided the character of the defence case is not completely changed. The said decision does not come to the aid of the petitioner but the same supports case of the opposite parties herein as the petitioner sought to completely change the character of the defence case by way of amendment.

The plea raised by the petitioner in the original written statement is based on his own title. The petitioner has neither denounced his title nor admitted the title of the opposite party

herein. Though the plea of adverse possession was available to the petitioner, such plea was not taken in the original written statement and the prayer for amendment to incorporate such plea has been taken only at the appellate stage. The plea based on title and adverse possession are mutually destructive. It is well settled that contradictory and mutually destructive pleas cannot be allowed to be raised by way of amendment in the written statement. The learned trial judge rightly observed that the petitioners are trying to take a new line of defence at the appellate stage.

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

Accordingly, C.O. 689 of 2025 stands dismissed.

However, there shall be 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.)