

Sl.28
12.03.2025
Court No.6
BP

C.O. 741 of 2025

Sk. Sarwar Anis alias Sarwar Anis Sk.
-versus-
Sk. Jasimuddin Haider & Anr.

Mr. Quazi Monirul Islam
..for the petitioner.

This application under Article 227 of the Constitution of India is at the instance of the appellant in Title Appeal No. 45 of 2022 and is directed against an order dated 7th December, 2024 passed by the learned Additional District Judge, Second Court at Srirampur in Title Appeal No. 45 of 2022.

By the order impugned the application under Order 1 Rule 10 of the Code of Civil Procedure praying for impleading Sk. Ruhul Amir and Sk. Md. Sahanawaz were rejected by the impugned order.

The learned advocate appearing for the petitioner submits that the persons sought to be added by filing an application under Order 1 Rule 10(2) of the Code of Civil Procedure are necessary parties and for such reason, the learned judge of the 1st Appellate Court erred in law by rejecting the prayer for their addition. The learned advocate for the petitioner further submits that such an amendment can be made at any stage of the proceeding and in support of such contention he

placed a reliance upon a decision of the Hon'ble Supreme Court in the case of Amit Kumar Shaw & another vs. Farida Khatoon and another reported in (2005) 11 SCC 403.

The petitioner herein filed a suit for declaration that he is the absolute owner and occupier in respect of Schedule (A) property as mentioned in the plaint and for permanent injunction. In such a suit the petitioner and Sk. Md. Sahanawaz were impleaded as plaintiffs. The said Sk. Md. Sahanawaz was not willing to proceed with the said suit and accordingly he filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure praying for striking out his name from the cause title and such prayer was allowed by order being No. 7 dated January 11, 2018. The learned trial judge noted that the suit property is an unpartitioned one which was originally transferred in favour of the petitioner along with Sk. Md. Sahanawaz and Sk. Ruhul Amir. The learned trial judge after noting that Sk. Ruhul Amir is a necessary party and has not been impleaded dismissed the suit on the ground of non-joinder of a necessary party.

Being aggrieved against such judgement and decree the petitioner preferred an appeal.

Order 41 Rule 20 of the Code of Civil Procedure provides for addition of any person who was a party to the suit but who has not been made a party in the

appeal and is interested in the result of the appeal to be impleaded as a respondent.

The persons whom the petitioner sought to add were not parties to the suit.

In Amit Kumar Shaw (supra) the issue was as to whether a transferee pendente lite should be made as parties in a pending appeal. The said decision being distinguishable on facts cannot be applied to the case on hand.

This Court is of the considered view that the learned Judge of the First Appellate Court was right in rejecting the application under Order 1 Rule 10 (2) of the Code of Civil Procedure.

With the above observations and directions, C.O. 741 of 2025 stands dismissed.

There shall be however 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.)