

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

**CO 832 of 2023
with
CAN 3 of 2025
with
CAN 4 of 2025
with
CAN 5 of 2025.**

**Mina Ghosh & Ors.
versus
Debasish Ghosh & Ors.**

For the petitioners : Ms. Soma Kar Ghosh,
Mr. Arabinda Pathak,
Ms. Suparna Paul,
Ms. Shilpa Ghosh.

For the opposite parties : Mr. Koushik Chatterjee (VC).

Heard on : 15.12.2025.

Judgment on : 15.12.2025.

Raja Basu Chowdhury, J (Oral):

1. Though the matter had appeared under the heading "Extension of Interim Order", however, considering the fact that the matter pertains to a challenge to an order rejecting an application for amendment of a plaint and noting that the suit is one for partition and injunction and has remained stayed since 14th August, 2023,

in presence of and upon prior notice to the parties, the matter has taken up for final hearing.

2. Upon perusal of the records, it would transpire that the plaintiffs/petitioners have filed a suit for partition and injunction against the defendants, *inter alia*, contending that the original suit property belongs to the predecessor-in-interest of the plaintiffs, namely, Ashutosh Ghosh (now deceased) to the extent of 08 annas share and the Santosh Kumar Ghosh, (now deceased), the predecessor-in-interest of the present defendants to the extent of balance 08 annas. The plaint case proceeds on the premise that the present plaintiffs by way of claim of inheritance acquired the interest of Ashutosh Ghosh, since deceased in the suit property. According to the plaint case the suit property is undivided. Since, the request for amicable partition did not succeed the suit was filed.
3. According to the plaintiffs, since, two several plots being LR Plot No.1924 and LR Plot No.1926, morefully detailed in the Schedule of amendment application had been left out, the amendment application was filed. Such application was duly contested by the defendants.
4. It is the defendants' case that the defendant no.1 had since instituted a title suit against the plaintiffs being TS No.195/2022 before the learned Civil Judge, Junior Division, 2nd Court, Serampore, Hooghly. Though, the present plaintiffs had challenged

the maintainability of the suit, such challenge did not succeed and was rejected by the learned Judge.

5. According to the advocate for the defendants, since the aforesaid plots which the plaintiffs seek to incorporate by way of amendment in the plaint, forms subject-matter of a separate suit, the same should be kept outside the purview of the partition suit and the learned judge had by the order impugned rightly rejected the amendment application.
6. It is also submitted by Mr. Chatterjee, learned advocate representing the defendants/opposite parties that though the suit filed by the defendants has been substantially heard, the decree has not been passed as yet.
7. Learned advocate for the plaintiffs, on the other hand, would submit that the title suit being TS No.195/2022 has been filed subsequent to the filing of the partition suit.
8. According to the learned advocate for the plaintiffs, since the aforesaid property which the plaintiffs seeks to incorporate was left out by inadvertence, the above amendment application was necessitated. This apart, it is submitted that the trial of the suit had not yet commenced and that the learned Judge had conducted a mini trial while deciding the amendment application. According to the learned advocate, the impugned order should be set aside and the amendment application should be allowed.

9. Having heard the learned advocates for the respective parties, I find that by way of amendment application the plaintiffs seek to incorporate two additional suit plots in the partition suit, wherein the plaintiffs claim that both Ashutosh Ghosh and Santosh Kumar Ghosh had eight annas share each.
10. The plaintiffs are the successor-in-interest of Ashutosh Ghosh while the defendants are the successor in-interest of Santosh Kumar Ghosh. I also find that the learned Judge while deciding the amendment application has, in fact, gone into the merits of the proposed amendment and has considered as to whether in the facts of the case plaintiffs had been able to establish its interest over the proposed suit property, which the plaintiff seeks to incorporate by way of amendment.
11. The learned Judge has also proceeded to note that though the property belongs to Santosh Kumar Ghosh but the plaintiffs could not produce any document to demonstrate that the property was a joint property, and that the record of rights filed by the plaintiffs do not reflect the proposed suit plots which have been sought to be introduced by the amendment. On such finding, the amendment application was rejected.
12. I am, however, of the view that there is no scope at the stage of considering an amendment application, to go into the merits of the case and to call upon the plaintiffs for that matter to prove the case at that stage.

13. In this context, I find that the learned Judge had exceeded its authority in entering into the merits of the proposed plaint case to allow the amendment application. What was necessary for the learned Judge was to consider whether the proposed amendment was likely to alter the nature and character of the suit, whether such amendment is necessary to determine the real controversy in issue, and necessary to avoid multiplicity of legal proceedings, and whether the same was bona fide.
14. Admittedly, the plaintiffs have made out a case in the amendment application that the aforesaid property formed part of the joint and undivided property and ought to have been included in the partition suit which had been left out inadvertently due to lack of knowledge. At this stage, there is no scope to test out the aforesaid proposed amendment on merits. The trial in suit is yet to commence though written statement has already been filed. The same also does not alter the nature and character of the suit. The amendment also sought for appear to be bona fide.
15. This apart, it would be relevant to note that the partition suit has been filed prior in point of time than the Title Suit No.195/2022.
16. Having regard thereto, the impugned order dated 20th January, 2022 passed by the learned Civil Judge, Junior Division, 2nd Court, Searampore, Hooghly cannot be sustained and the same is accordingly set aside.

17. The amendment application filed by the plaintiffs is accordingly allowed, though subject to payment of cost of Rs. 15,000/- for the delay for compensating the defendants .
18. The plaintiffs are directed to file duly affirmed amended copy of the plaint before the learned Court within 15th January, 2026, subject to payment of costs of Rs.15,000/- to be paid to the defendants' advocate before filing of the copy of the plaint. The plaintiffs must serve the amended copy of the plaint by marking the amended portions in red ink in terms of the Schedule forming part of the amendment application.
19. The defendants shall be at liberty to use additional written statements within 30 days from the date of receipt of the amended copy of the plaint.
20. With the above observations and directions, CO 832 of 2025 along with applications stand disposed of.
21. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

**Pritam
A.R. (Court)**