

D/L- 20
24/03/2025
Ct. No.-6
Aritra

C.O. 1012 of 2025

**Kaushalya Devi & Ors.
Versus
Asha Chowdhry & Ors.**

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K.R. Ahmed
Mr. Rudranil Das
Mr. Soumava Santra
Mr. Tapas Chatterjee

...for the petitioners

Mr. Supriyo Chattopadhyay
Mr. Sudip Kumar Maiti
Ms. Debosri Chatterjee

....for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order dated January 29, 2025 passed by the learned Civil Judge (Sr. Div.), 2nd Court, Howrah in Title Suit No.136 of 2024.

By the order impugned the application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint and an application under Section 153 read with Section 151 of the Code of Civil Procedure for amendment of the injunction application stood rejected.

The petitioners herein filed a suit for partition and for declaration that the deed of partition dated July 8, 2022 is void, illegal, inoperative and not binding upon the plaintiffs and for other consequential reliefs.

It is the case of the petitioners that in course of hearing of an application under Order 39 Rule 4 of the Code of Civil Procedure, they came to know from the submission of the learned advocate for the opposite parties that a development agreement dated June 15, 2023 and a registered power of attorney were executed by the opposite parties herein in favour of the developer. It is the further case of the petitioners that the opposite parties herein obtained an information under the provisions of Right to Information Act, wherefrom they came to know that the suit property was not recorded as holding No.33 previously. For the purpose of correcting the erroneous description of the suit property and for the purpose of incorporating the fact of that a development agreement was entered into by the opposite parties herein with the developer, the petitioners filed the application for amendment of the plaint as well as the injunction application.

Mr. Mukherjee, learned advocate appearing for the petitioners submits that the petitioners have become co-sharers in respect of the suit property having 1/8th share each by virtue of inheritance from one Mahabir Chaudhury. He further submits that the partition deed was executed by and between the opposite parties herein leaving out the petitioners and for such purpose the petitioners have challenged the partition deed in the suit for partition. Mr. Mukherjee further submits that the

opposite parties herein are trying to change the nature and character of the suit property by engaging a developer and by entering into a development agreement with them and a power of attorney for such purpose has also been executed by the opposite parties herein in favour of the developer. He further submits that the right, title and interest of the petitioners in respect of the suit property will be affected as a result of such development agreement. He further submits that immediately after coming to know of the execution of the development agreement and the power of attorney the petitioners have applied for amendment and have also prayed for declaration that the development agreement and the power of attorney is illegal, void, inoperative and not binding upon the petitioners and such prayer is well within the prescribed period of limitation for claiming such reliefs.

Mr. Chottopadhyay, the learned advocate appearing for the opposite parties seriously disputed the submissions of Mr. Mukherjee. He submits that the original owner of the suit property died prior to the coming into force of the Hindu Succession Act, 1956 and, therefore, in view of the law prevailing at the relevant point of time the petitioners did not inherit any share upon the death of Mahabir Chaudhury. He submits that the fact of execution of the development agreement was not disclosed in the application under Order 39 Rule 4 of

the Code of Civil Procedure. He however, supports the reasoning assigned by the learned trial judge for rejection of the application for amendment.

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

After reading the plaint as a whole this Court finds that the petitioners herein have claimed to be the co-shares in respect of the suit property by virtue of inheritance from the original owner, namely, Mahabir Chaudhury. In the plaint the petitioners have prayed for a decree for partition in preliminary form by declaring the share of the plaintiffs and the defendants to the extent of 1/8th share each in respect of schedule A property. It has been further stated in the plaint that the petitioner have come to know about the execution of a partition deed dated July 8, 2022 and after obtaining a certified copy of the same have come to know that the defendants in collusion and conspiracy with each other and by suppressing the existence of the plaintiffs executed such registered deed of partition.

In the application for amendment in paragraph I and II of the schedule of such application the petitioners have prayed for deletion of the words “previously 33”.

After going through the materials on records, this Court finds that the petitioners herein initially described the suit property to be previously recorded as holding No.33 and at present holding No.52, Rajen Seth Lane.

After being made aware of the erroneous description of the suit property the petitioners have sought to amend the holding number of the suit property by deleting the words “previously 33”. Petitioner came to know subsequently from an information supplied under the provisions of the RTI Act that previously the suit property was not recorded as holding No.33.

This Court finds that the amendment sought for to correct the erroneous description of the suit property will not in any way change the nature and character of the suit property and the same is necessary in order to avoid any future complications at the later stage of the proceeding.

In paragraph III of the schedule of the amendment, the petitioners have sought to introduce the fact relating to execution of the development agreement dated June 15, 2023 by the defendant Nos.1 to 12 by suppressing the existence of the other co-sharers of the suit property and the execution of the power of attorney in connection with the development agreement.

As observed hereinbefore, the suit is for partition of the property which was originally owned by Mahabir Chaudhury (since deceased). The real controversy between the parties in such a suit is as to whether the parties are co-sharers in respect of the suit property and, if so, the extent of their shares in the suit property. The execution of partition deed without impleading the other

co-sharers is also a relevant fact to be considered in such a suit. However, the fact of execution of a development agreement in connection thereto by some of the co-sharers of the suit property with the third party cannot be said to be a fact relevant for the purpose of deciding the real controversies between the parties in a suit for partition. As to whether the co-sharers are entitled to develop the property during the pendency of the suit may arise at the time of hearing of the application for injunction but the same cannot be a ground for introducing the fact of execution of a development agreement and a power of attorney by some of the co-sharers in favour of a third party by way of amendment. It is not the case of the petitioners that they are parties to the development agreement.

It is elementary that only the co-sharers of a property are necessary parties in a suit for partition. By no stretch of imagination a developer allegedly engaged by a co-sharer can claim to be a co-sharer of the suit property.

Order 6 Rule 17 of the Code of Civil Procedure states that the court may at any stage of the proceeding allow either party to alter or amend his pleading in such a manner and on such terms as may be just and all such amendment shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Thus only the amendments which are necessary for the purpose of determining the real questions in controversy between the parties can be allowed. The real controversy between the parties in the instant suit as observed hereinbefore is only as to whether the parties are co-sharers and if so, the extent of their shares and also as to whether the partition deed is valid or not.

The execution of the development agreement and the power of attorney in connection thereto cannot, by any stretch of imagination, be said to be necessary for the purpose of determining the real question in controversy between the parties in a suit for partition.

For such reason this Court is not inclined to allow the prayer for amendment as contained under paragraphs III, IV, V and VI to the schedule of amendment.

The order impugned calls for interference only to the limited extent as indicated hereinbefore. CO 1012 of 2025 stands allowed in part. The amendment sought for as indicated in paragraphs I and II of the application under Order 6 Rule 17 and the application under Section 153 read with Section 151 of the Code of Civil Procedure stands allowed.

The petitioner shall file the amended plaint within a period of two weeks from the date of receipt of the server copy of this order and serve a copy upon the opposite parties. The opposite parties will be at liberty to file an

additional written statement within the time limit as may be fixed by the learned trial judge.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)