

Court No. 6
(265719)

17.02.2025
(AD 34)
(S. Banerjee)

CO 1028 of 2024

Madan Mohan Das
Vs.
Nemai Mondal & Ors.

CAN 1 of 2024
CAN 2 of 2024

Mr. Pappu Adhikari
...for the the petitioner
Mr. Ritwik Pattanayak
...for the legal heirs of the petitioner
Mr. Debanjan Banerjee
...for the OP nos. 1 to 7

Re: CAN 1 of 2024
CAN 2 of 2024

1. CAN 1 of 2024 is an application praying for substitution of the heirs who have been described as applicants in the said application.
2. Applicants of CAN 1 of 2024 filed an application, being CAN 2 of 2024 praying for withdrawal of CAN 1 of 2024 and to proceed with CAN 2 of 2024.
3. It has been stated in CAN 2 of 2024 that the original petitioner transferred his right, title and interest in respect of the property which is the subject-matter of the suit by dint of registered

deed of gift dated 30th January, 2017. In view thereof, the applicants in CAN 2 of 2024 has prayed for an order permitting the applicants to proceed with the instant application under Article 227 of the Constitution of India.

4. In view thereof, the prayer of the applicants in CAN 2 of 2024 praying for leave to proceed with the CO 1028 of 2024 accordingly stands allowed.

5. Both the CAN applications are thus disposed of.

Re: CO 1028 of 2024

6. This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against the Order No. 251 dated 22.02.2024 passed by the learned Civil Judge (Jr. Division), Haldia, Purba Medinipur in Title Suit No. 32 of 1996. By the order impugned the application for amendment of plaint stood rejected.

7. Learned advocate appearing for the petitioner submits that the proposed amendments are necessary for the purpose of deciding the real controversy between the parties. The original petitioner died during the pendency of the civil revision application and the applicants in CAN 2

of 2024 have been granted leave to proceed with this application.

8. It is not in dispute that the application for amendment of plaint was filed after the commencement of trial. Proviso to Order VI Rule 17 of the Code of Civil Procedure states that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.
9. The petitioner herein sought to amend the plaint at a point of time when the cross-examination of the plaintiff was about to be closed. The learned trial Judge has specifically recorded that the local inspection was conducted on February 21, 1996 and it has been further recorded in the impugned order that another local investigation was conducted on August 22, 2006. The learned trial Judge has recorded a factual finding that in view of the said report of the local investigations that has been conducted, it is evident that there is a tin-sheded chala ghar upon the suit plot and the plaintiff had knowledge about the 'B' strip and tin shaded chala ghar from the year 1996 and 2006. In the application for

amendment the plaintiff/petitioner herein has not explained satisfactorily the reasons for which the application for amendment could not have been filed prior to the commencement of trial.

10. In view thereof, this Court is not inclined to interfere with the order impugned rejecting the application for amendment of plaint.

11. With the above observation CO 1028 of 2024 stands disposed of.

12. There shall be no order as to costs.

13. Urgent photostat certified copy of this order, if applied for, be issued to the parties on compliance of requisite formalities.

(Hiranmay Bhattacharyya, J.)