

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**C.O. 1238 of 2025
Sri Birendra Nath Barman
Vs.
Sri Manik Guri & Ors.**

For the Petitioner : Mr. R. Mahata
..... advocates

For the Opposite Parties : Mr. Ashish Chandra Bagchi,
Sr. Advocate

Ms. Malyasree Maity
Mr. Fardeen Hossain
Mr. Nishant Kumar
...advocates

Heard on : 23.07.2025

Judgment on : 24.10.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order being No. 44 dated March 05, 2025 passed by the learned Civil Judge (Junior Division) 2nd Court, Tamluk, Purba Medinipur in Title Suit No. 35 of 2021.
2. By the order impugned, the application for amendment of plaint was allowed in part.
3. The case made out by the petitioner in the plaint is that one Surendra Nath Barman sold and transferred land and a portion of a waterbody as specifically described in "Ka" schedule of the plaint in favour of the

petitioner by a registered deed of conveyance dated 13.04.1994 . Petitioner claims that while in possession of the said “Ka” schedule property he has constructed a pucca house thereupon and is residing in the said house. The portion of the “Ka” schedule property whereupon a dwelling house was constructed is described in “Ka-1” schedule of the plaint. It is the further case of the petitioner that on 27.12.2020, the opposite parties forced the petitioner to sign on some blank papers. Since the opposite parties being strangers to the suit property were creating disturbances in the peaceful possession of the petitioners, the instant suit was filed praying for declaration of title and permanent injunction.

4. The opposite parties are contesting the said suit by filing a Written Statement denying the material allegations contained therein. The specific defence case is that the petitioner has relinquished his right, title, interest and possession in respect of the suit property on 02.02.2008 in favour of Sree Sree Kalimata Thakurani represented by the Hindu inhabitants of the Purba Dobandi and SreeKantha village.
5. Petitioner filed an application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of plaint. By virtue of the said application, petitioner sought to correct the erroneous description of the extent of construction by inserting the word “double storeyed” in paragraph 7 of the plaint after deleting the word “single storeyed”. Petitioner also sought to add some paragraphs after paragraph 10 of the plaint as paragraphs 10(Ka) to 10(gha).
6. The learned trial judge allowed the prayer for amendment in terms of Serial No. 1 of the Schedule of amendment application but rejected the prayer for amendment under Serial No. 2 of the amendment application.
7. Thus, the prayer for amendment of the description of the house in paragraph 7 of the plaint was allowed and the prayer for inserting new paragraphs after paragraph 10 of the plaint was refused.

8. Being aggrieved by the portion of the order rejecting the prayer for insertion of certain paragraphs after paragraph 10 of the plaint, the plaintiff has approached this Court.
9. Mr. Mahato, learned advocate appearing for the petitioner contended that the opposite parties have specifically pleaded in the written statement that the plaintiff has relinquished his title in respect of the suit property and in order to controvert such statements made in the written statement, the petitioner sought to amend the plaint by inserting some paragraphs. He contended that the proposed amendments are necessary for the purpose of deciding the real controversies between the parties. Mr. Mahato further contended that Order 8 Rule 9 of the Code of Civil Procedure permits the plaintiff to file a replication to the Written Statement in order to join specific pleading to a case specifically raised in the Written Statement. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Noorul Hassan vs. Nahakpam Indrajit Singh and others** reported at **(2024) 9 SCC 353**.
10. Mr. Bagchi, learned Senior advocate appearing for the opposite parties seriously disputed the contention of Mr. Mahato. He contended that the application for amendment of plaint was filed for the purpose of denial of the defendant's case. He submitted that the plaint cannot be allowed to be amended to incorporate the mere denial of the defendant's case. Mr. Bagchi placed reliance upon the decision of the Hon'ble Supreme Court in the case of **P.A. Jayalakshmi vs. H. Saradha & Ors.** reported at **(2009) 14 SCC 525** in support of his contention that amendment can be allowed if the Court finds that the same is necessary for the purpose of deciding the real dispute between the parties.
11. Heard the learned advocates for the parties and perused the materials placed.
12. Order 6 of the Code of Civil Procedure deals with pleadings. "Pleading" shall mean plaint or written statement. Every pleading shall contain a statement in a concise form of the material facts on which the party pleading relies for

his claim or defence. Every pleading shall be signed by the party and his pleader and shall be duly verified.

13. Order 7 of the Code deals with plaint. Order 8 of the Code deals with Written Statement Sub-rule (2) of Rule 8 casts an obligation upon the defendant to specifically plead new facts. Rule 8(3) states that the defendants must deal specifically with each allegation of fact of which he does not admit the truth. Sub-rule 5 of Rule 8 states that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the written statement shall be taken to be admitted.
14. After going through the relevant provisions of the Code of Civil Procedure, this Court is of the considered view that the rules of pleadings require that the defendant has to deny specifically every averment made in the plaint if he chooses to deny the same.
15. However, the plaintiff stands on a different footing. There is no provision in the Code of Civil Procedure which mandates that the plaintiff has to deny specifically every averment made in the Written Statement if he chooses to deny the same. In the absence of any provision to the contrary in the Code of Civil Procedure, every material averment made in the Written Statement is presumed to be denied by the plaintiff.
16. At this stage it would be profitable to take note of the decision of the Hon'ble High Court at Patna in the case of **Roshan Lal vs. Prem Prakash** reported at **AIR 1980 Patna 59** wherein it has been held that the plaintiff is entitled to join issues with the defendant with respect to all those allegations which are made in the Written Statement and may lead evidence in rebuttal of those allegations notwithstanding the fact that he did not file any rejoinder.
17. In view of the aforesaid discussion, this Court holds that there is no necessity to amend the plaint only for the purpose of mere denial of the case made out by the defendant in the Written Statement and the plaintiff may lead evidence in rebuttal of the allegations made in the Written Statement at the time of filing the affidavit-in-chief of the plaintiff's witness.

18. At the first blush, the alternative argument advanced by Mr. Mahato that the plaintiff has a right to file a replication to the Written Statement in the light of the provisions laid down under Order 8 Rule 9 of the Code of Civil Procedure, seem to be very attractive. However, on a closer scrutiny of the relevant provisions of the Code, the said argument pales into insignificance.
19. Before dealing with the said submission it would be beneficial to take note of the provisions laid down under Order 8 Rule 9 of the Code. Order 8 Rule 9 of the Code reads as follows:

“9. Subsequent pleadings

No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.”

20. Order 8 Rule 9 of the Code deals with subsequent pleadings. From a bare reading of the said provision it is evident that a subsequent pleading by way of defence to a set off or counterclaim can be filed by the plaintiff as a matter of right conferred by the Code. Under the said rule, either party can also file a pleading subsequent to the written statement of the defendant, with the leave of the Court and upon such terms as the Court thinks fit. The said rule also provides that the Court may at any time require a written statement or additional written statement from any of the parties.
21. Order 8 Rule 9 of the Code also does not mandate that the plaintiff has to file a replication to the allegations contained in the Written Statement or that the failure on the part of the plaintiff to file such replication would amount to admission of the plea in the Written Statement.

22. A question that fell for consideration before the Hon'ble Supreme Court in **Noorul Hassan** (supra) was in what circumstances leave to file subsequent pleading may be granted by the Court.
23. The Hon'ble Supreme Court in the said reports noticed the decision of the Hon'ble Delhi High Court in the case of **Anant Construction (P.) Ltd. vs. Ram Niwas** reported at **1994 SCC Online Del 615** and approved the same. The Hon'ble Supreme Court in paragraph 29 of the said reports held that the Court while considering grant of leave under Order 8 Rule 9 of the Code must bear in mind that (a) a replication is not intended to merely traverse facts pleaded in the Written Statement; (b) a replication is not a substitute for amendment and (c) a new cause of action or plea inconsistent with the plea taken in the original petition/ plaint is not to be permitted in the replication.
24. By applying the proposition of law laid down in **Noorul Hassan** (supra), this Court holds that for a mere denial of the defendants case by the plaintiff, the Court should not grant leave to file a subsequent pleading under Order 8 Rule 9 of the Code.
25. The decision in the case of **Noorul Hassan** (supra) does not support the case of the petitioner.
26. That apart, the petitioner did not seek leave under Order 8 Rule 9 of the Code of Civil Procedure to file subsequent pleading but applied under Order 6 Rule 17 of the Code for amendment of plaint.
27. Order 6 Rule 17 of the Code of Civil Procedure deals with the power of the Court to allow either party to alter or amend the pleadings.
28. It is now well settled that all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side.
29. In **P.A. Jayalakshmi** (supra) it has been held that it is the primal duty of the Court to decide as to whether an amendment is necessary to decide the

real dispute between the parties and only if such a condition is fulfilled, the amendment is to be allowed.

30. In the said reports, the Hon'ble Supreme Court also pointed out the distinction between Order 6 Rule 17 and Order 8 Rule 9 of the Code by observing that under Order 6 Rule 17, unless a contrary intention is expressed by the Court, any amendment carried out in the pleadings shall relate back to the date of filing the original plaint but subsequent pleading stand on different footings.
31. Turning back to the facts of the case on hand, this Court has to decide whether the proposed amendments under Serial No. 2 of the Schedule of the application for amendment are necessary for the purpose of deciding the real controversies between the parties.
32. After going through the statements contained in paragraph 10(Ka), 10(ga) and 10(gha) under Serial No. 2 of the Schedule of the application for amendment, this Court is of the considered view that the learned trial judge was right in observing that the plaintiff/ petitioner herein intended to deny the facts relating to execution of the agreement for sale, as well as other relevant facts stated in the written statement. To the mind of this Court, the object behind incorporating the statements contained in the aforesaid paragraphs are only for the purpose of denial of the specific defence made out in the Written Statement. Insofar as the statements contained in paragraph 10(Kha), this Court finds that the petitioner sought to incorporate the incident that took place on 27.12.2020. It is evident from the averments made in paragraph 9 of the plaint, that such facts have already been disclosed in the plaint. It is well settled that useless amendments should not be allowed. This Court, therefore, holds that the statements contained in paragraph 10(kha) are not necessary as the said facts are already on record.
33. In view of the aforesaid discussion, this Court holds that the learned trial judge was right in rejecting the amendment sought for under Serial No. 2 of the schedule of the application for amendment. The order impugned does

not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

34. CO No. 1238 of 2025 stands dismissed. There shall be, however, no order as to costs.
35. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)