

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS

CO 1200 OF 2024

NOOR MOHAMMAD MONDAL AND ORS.

VS

AKRAM HOSSAIN MONDAL AND ORS.

For the Petitioners : Mr. Sounak Bhattacharya, Adv.
Mr. Chandra Nath Sarkar, Adv.
Mr. Sounak Mondal, Adv.
Mr. Anirban Saha Ray, Adv.
Mr. Abhirup Halder, Adv.

For the Respondent

No. 1 : Mr. Sarajit Sen, Adv.
Mr. Subhajit Mondal, Adv.
Mr. Parag Mitra, Adv.

Last Heard on : 17.06.2025

Judgement on : 02.07.2025

CHAITALI CHATTERJEE DAS, J:-

1. This revisional application is directed against an order dated February 12, 24 passed by learned Civil Judge (Jr.) Division 3rd Court at Baruipur, 24 Parganas South in Title suit No. 3 of 2007. The present petitioners being the plaintiff filed a suit for declaration and permanent injunction against the opposite parties before the learned trial court. The Opposite Party No. 1,

entered appearance and filed written statement denying the material allegations containing in the plaint. The petitioner thereafter filed an application under Order VI Rule 17 of the Code of Civil Procedure praying for an amendment of the aforesaid suit. Written objection was filed by the Opposite Party No1. The Learned Trial Court after hearing both the parties reject the application for amendment on the ground that if the amendment is allowed, it will invite future amendment and will change the nature and character of the suit.

2. It is argued before this court that amendment can be made at any stage of the proceeding provided in case where trial has commenced the petitioner will have to assign sufficient reasons and in this case the trial has not commenced. Furthermore the nature and character of the suit will not be changed as the suit was filed for declaration and the proposed amendment is to incorporate the prayer for partition in the alternative and should treat as a consequential relief to the original relief. It is further argued that in order to obtain a relief under Section 34, plaintiff must establish that the plaintiff is at the time of suit entitled to any legal character or to any right as to any property and *legal character* and *right* to property are used disjunctive so that either of them exclusively made, maybe the basis of a suit.

3. It is further argued that the proposed amendment was only for the purpose of proper adjudication of the dispute pending before the trial Court neither the proposed amendments will change the nature and character of the suit. It is further assailed that the Hon'ble Supreme Court in a catena of decisions has observed that the court must take lenient approach while

dealing with applications for amendment. The Learned advocate has relied upon the decisions reported in¹ and the judgement of the Division Bench of the High Court at Calcutta in F.A.T 203 OF 2024 Avik Ghosh and ors vs Sukumar Ghosh and ors.

4. The advocate of the Opposite Party, on the other hand raised vehement objection, and argued that the suit was filed for declaration and permanent injunction, but by virtue of this proposed amendment, the petitioners are intending to change the basic nature and character of the suit .The plaintiff/petitioner failed to satisfy the learned trial court as to why in the plaint the fact of ‘partition on family settlement on May 17, 2022 was approached which was refused by this opposite party “has not been incorporated in the plaint when it was very much known to the plaintiff. It is further argued that the decisions cited by the Opposite Party must be tested through the lenses of facts and circumstance of the instant case and in this regard, relied upon a decision reported in² in Union of India and Anr. vs Major Bahadur Singh.

5. Heard the submissions of both the learned advocates. The Title suit no. 3 of 2007 was filed by the predecessor of the present petitioner No. 25 (ka).(kha),(ga)(cha), plaintiff No 1,2 ,3,4 5 (unga) 5(cha),5 (ja) the pro forma Opposite Parties against the present Opposite parties and the Opposite Party and the pro forma defendants number 10 to 56, for a decree of declaration and permanent injunction in respect of the suit property along with permanent Injunction . The contents of the plaint prima facie reveal

¹ AIR 1963 CAL 46

² (2006) 1 SSC 368

that one Kayem Mondol was the absolute owner of the suit property, and his name was recorded in the CS and RS record of rights. After his demise, his three sons and daughter became the joint shareholders of the said property and were in possession of the same. One of the son of Kymal, Abdul Majid Mondal died leaving his one son Abdul Wahab, who became joint shareholder of the said property in respect of the share of his father. In this manner, the other two sons also expired and their legal heirs stepped into their shoes. The present plaintiffs being the legal heir of kayem Mondal inherited their respective share in the suit property. According to the plaintiff, Kayam Mondal in his lifetime never transferred the right title and share of the suit property to any third-party by virtue of deed of gift or sale or assignment. The plaintiff challenged that the suit property in RS record has been recorded in the name of Ramjan Mondal and Noor Mandal as in possession and further denied that the defendant No.1 purchased the same from said, Noor Mohammad and others on 10/12/2006.

- 6.** The case of the defendant/Opposite Party is a complete denial of the plaintiff's case, and according to them Achurnecha Bibi became the absolute owner in respect of the suit property by purchasing the same in a Rent execution case No.1161 of 1932 arising out of Rent suit number 3133 of 1931. She transferred by virtue of sale deed dated 15.5.1934, 1.4 acre of land in favour of Abdul Khaliq Naskar, who transferred in the year 1934 in favour of Kazi Muddin Mandal who subsequently transferred 52 decimal of land in favour of Ramjan Mondal and Noor Mohammad Mondal by a registered deed of conveyance dated June 8, 1953 and since thereafter were in exclusive possession of their purchased property till they transferred in

favour of the defendant in the year 1966 and they are in exclusive possession of their purchased property suit property by paying tax to the Government.

7. After filing of the written statement, the plaintiff filed the application for amendment to incorporate the prayer for partition as an alternative relief.

In Revajeevu Builders and Developers vs Narayanswami & anr; Sons & amp; ors. reported in³ the Hon'ble Supreme Court observed that 'the court should not go into the correctness or falsity of the case in the amendment and not to record any finding on merits of the correctness or falsity of the case in the amendment'. In the said case, the suit was filed for declaration and the proposed amendment sought for was to declare that defendants are in possession and also for mandatory injunction and permanent injunction. The said application was allowed against which a revisional application was filed before the High Court of Karnataka on the ground that it would change the nature and character of the suit and cause of action. The Hon'ble Supreme Court taking note of various judicial pronouncements made a guideline and to consider the factors to be taken into consideration while dealing with applications for amendment which are as follows.

Para 67 . On critically analysing both the English and Indian cases, some basic principles emerge which are to be taken into

³ (2009) 10 SCC 84

consideration while allowing or rejecting the application for amendment. Whether the amendment sought is imperative for proper and effective adjudication of the case 2. Whether the application for amendment is bona fide or mala fide The amendment should not cause such prejudice to the other side, which cannot be compensated adequately in terms of money.

8. In the light of above legal understanding let me go through the finding qua the order passed by the learned court. The learned Trial Court while refusing the prayer for amendment of the plaint was of the view that when plaintiff make proposal to the defendant for amicable partition which was refused by the defendant, then a new and separate cause of action arose on May 17, 2022. That apart if the present amendment is allowed, it will invite future amendment as the shares of parties are not allocated and in short span of time, parties does not arrive at conclusion then again plaintiff will come with new prayer for amendment.

9. In the decision of Hon'ble Supreme Court it was held that "*while deciding applications for amendments, the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and dishonest amendments*". It is a settled proposition of law that the power of court to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, but exercising discretionary powers is to be governed by judicial considerations. Furthermore the liberal principles which guide the exercise of discretion also to consider the point of multiplicity of proceeding and therefore, when the

amendments do not propose to alter the character of a character of cause of action or substantial changes the discretion of the court should be exercised without applying the technicalities of law or without adopting hyper technical approach.

10. The decision relied by the opposite party in Union of India vs Major Bahadur Singh(supra) relates to the interpretation of judgement and held that *“Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed”*. The matter relates to promotion of lieutenant colonel by Selection Board as he was not empanelled on the basis of overall profile and comparative batch merit. It was observed by the Hon’ble court in paragraph 11 that. *‘circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blind placing reliance on a decision is not proper.’* The learned advocate has tried to impress upon this court regarding applicability of the decisions relied upon by the learned advocate of the petitioner.

11. The decisions reported in⁴ Sm. Shivani Devi, and others versus Ramendra Nath Mukherjee and others as relied upon by the learned advocate of the petitioner, where by way of reference the matter went before the Hon’ble three judges bench and the question referred to was “whether in a suit otherwise, which satisfies the requirement of clause (VA) of Schedule II of article 17 of the court fees act, would go out of the purview of that clause, if the plaintiff joins as defendant a stranger, that is a person who is not a co-owner, for enforcing in his presence, his(the plaintiff’s) right to the share,

⁴ (1960) 2 SCC online 121

claimed by him in the suit properties, and if the determination of the question that the suit properties are joint properties, as claimed by the plaintiff, and of the plaintiff's title to the same as a question, as aforesaid, depends upon the construction or avoidance though not necessarily, cancellation, of some document or transaction in respect of the suit properties or any of them, in which the said stranger is or claims to be interested." The facts and circumstances of the said case and the point as referred is not relevant at this stage as the petitioner is not the stranger purchaser .

12. In the decision relied upon by the learned advocate in *Abhik Ghosh, and others versus Shivakumar Ghoshal others* F. A.T 203 of 2024, the Division Bench of the High Court at Calcutta, the prayer for permanent injunction was refused by the Trial Court holding that the suit is barred by the proviso to Section 34 of the specific relief act, 1963 where the suit was filed primarily for a decree of declaration that the plaintiffs are the joint owners of the schedule properties. It was held *'that in so far as the relief of partition is concerned, the same is not a further" relief, but an" other' independent relief so far as the declaratory relief is concerned. Partition is not a necessary adjunct to a relief of declaration of joint title and is an independent and" other" relief than declaration of title, which can be sought only if cause of action for such relief arises'*.

13. In the light of the above discussions and the various judicial pronouncement and considering the fact and circumstances of the case in hand, it is seen that the prayer of the plaint was for a declaration that the plaintiff is residing in the suit property for last 70 years and was in

possession uninterruptedly and has acquired a right of adverse possession. Furthermore if the relief sought for in the plaintiffs can be look into it would reveal that the plaintiffs prayed for a decree of permanent injunction against the defendants, not to disturb their peaceful possession in respect of their 2/3 share. The petitioner proposed to incorporate the prayer for partition as alternative prayer for declaration for adverse possession. The determination of the suit on the first hand will be whether plaintiffs have acquired a title by virtue of adverse possession and then if the said property is joint property of the persons amongst whom the partition has been claimed only they will be entitled to have their right of partition. So the determinations of the suit certainly depend on a finding against the defendant on the question of title over the suit property. Therefore unless the title of the plaintiff is established, partition as alternative relief is difficult to maintain. In this case the plaintiff has denied of having any title on the suit property by said Noor Mohammad and Ramjan Ali from whom the right of the defendants alleged to have been emanated. The cause of action for claiming an adverse possession cannot be equated with the cause of action for claiming partition. The word in section 34 of the Specific Relief Act 'further relief' must be a relief flowing directly and necessarily from the declaration sought and it must relate to the "legal character" or "the right" of any property which any person is entitled to and any person denies or intended to deny the character or right of such title.

- 14.** In the decision of the Division Bench of High Court at Calcutta also it has been observed that Partition is another independent relief and not necessarily an adjunct to a relief of declaration of joint title. So the prayer

for partition of 2/3rd is an independent relief which must have sufficient cause of action. Therefore, it cannot be said that the proposed amendment in question is necessary to determine the real question of controversy which is the question of title over the suit property and if permitted would definitely change the nature of the suit. Therefore this court finds no merit in the revisional application and hence is liable to be dismissed.

15. Hence the Revisional application is hereby dismissed without any costs.

16. The order passed by the learned Civil Judge (Junior Division) 3rd Court at Baruipur, 24 Parganas south is hereby affirmed.

17. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)