

CO 1649 of 2025

Smt. Maya Naskar & Anr.
vs.
Rabin Naskar & Anr.

Mr. Jit Ray
Mr. Dwaipayan Banerjee
Mr. Aharnish Ghosh
....for the Petitioners

Mr. Rajdeep Bhattacharya
....for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated February 10, 2025 passed by the learned Civil Judge (Senior Division) at Alipore in Title Suit No. 170 of 2012.

By the order impugned the application for amendment of plaint stood rejected.

The learned advocate appearing for the petitioners submits that though the challenge to the Deed of Gift was incorporated in paragraph 5A of the plaint but through inadvertence, the prayer for declaration that the cancellation of the registered Deed of Gift dated October 13, 2020⁶ is collusive, illegal, inoperative and null and void and for further declaration that the registered Deed of Gift dated August 10, 2007 is collusive, illegal, inoperative and null and void was not made.

Mr. Bhattacharya, learned advocate appearing for the caveator submits that on several occasions the plaint was amended and the plaintiff did not take care to

claim the said relief at the relevant point of time. He submits that the claim has already become time barred.

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

It is not in dispute that the trial of the instant suit has not yet commenced. Therefore, the proviso to Order 6 Rule 17 of the Code of Civil Procedure shall not apply to the case on hand. The Hon'ble Supreme Court in the judgment reported at **(2022) 16 SCC 1** in the case of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited*** observed that where the amendment is sought before the commencement of trial, the Court is required to be liberal in its approach. The Court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. It has been further held therein that where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation. It has been further held that if the amendment would enable the Court to pin pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed and while dealing with a prayer for amendment of pleadings, the Court should avoid a hyper-technical approach and is ordinarily required to be liberal.

It appears from the materials on record that the the aforesaid Deed of Gift has been challenged as would be evident from paragraph 5A of the plaint. Only the prayer in support of such averment was not made.

This Court is of the considered view that the proposed amendments are necessary for the purpose of determining the real controversies between the parties. Since the averment with regard to challenge to the aforesaid Deed of Gift is already there in the pleadings, it cannot be said that the plaintiff sought to incorporate a time barred claim by way of this amendment.

To the mind of this Court the learned trial Judge was hypertechnical in its approach and failed to appreciate that the object of Order 6 Rule 17 of the Code is to allow amendment if it would aid in rendering justice in a more satisfactory manner.

For all the reasons as aforesaid this Court is inclined to allow the prayer for amendment. The order impugned dated February 10, 2025 is set aside. The application for amendment stands allowed.

The petitioner shall file an amended plaint within 14 working days from the date of receipt of the server copy of this order and shall also serve a copy of the same to the opposite parties or their learned advocates.

The opposite parties shall be at liberty to file the additional written statement within a period of three weeks from receipt of a copy of the amended plaint.

With the above observations and directions, CO 1649 of 2025 stands allowed.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(Hiranmay Bhattacharyya, J.)