

31.10.2025

Court No.39

DL/Item No.-1

(pp)

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

CO 1455 of 2024

**Abdul Sayed
versus
Mir Tarekul Islam & Ors.**

Ms. Shabana Hasin

....for the petitioner.

Mr. Shibasis Chatterjee

....for opposite party no.1.

This revisional application is directed against Order No.33 dated 18th January, 2024 passed in Title Suit No.86 of 2021 now pending before the learned Civil Judge (Junior Division), 2nd Court, Jangipur, Murshidabad by which an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short 'CPC') for amendment of the plaint was rejected. The suit as initially framed is for permanent injunction in connection with an immovable property. The plaintiff in the plaint has stated to have purchased the schedule property for valuable consideration from one Soleman Ali. Soleman Ali according to the plaint case by virtue of an oral partition with one Tasleema Khatun got 78 satak land out of 117 satak land in Dag No.4209. Tasleema Khatun retained 39 satak land out of the said 117 satak land in Dag No.4209.

It is the case of the plaintiff that Soleman Ali while in possession of 78 satak land by a sale deed for

valuable consideration sold the property to the plaintiff. The defendant no.1, according to the plaintiff, is an influential person who allegedly recorded the property purchased by the plaintiff and got his name recorded in L.R. Dag number in respect of the property so purchased by the plaintiff. It is also the case of the plaintiff that the defendants were interested to dispossess the plaintiff and raise construction at the suit property.

After instituting the suit, the plaintiff moved an application under Order 39 Rule 1 of CPC. The ad interim injunction was refused. The plaintiff had also made an application under Order 39 Rule 7 of CPC, inter alia, for local inspection. According to the plaintiff, the Commissioner has reported that construction has been made on a portion of the suit property. The plaintiff alleges that the construction has been illegally made by the defendants after disposing the plaintiff during pendency of the suit taking advantage of the fact that there was no interim order of injunction. The plaintiff intends to amend the plaint by bring on record the subsequent developments and seeks the reliefs against dispossession and illegal contention.

It is to be noted that as per the plaint case the predecessor-in-interest allegedly received the suit property under an oral partition. According to the averments in the plaint, the petitioner has purchased the suit property for valuable consideration but the same

is undemarcated as there was no partition between the petitioner's vendor and Tasleema Khatun.

The petitioner has not sought for any relief for declaration, although the petitioner has alleged that the defendant no.1 is interested to deny the legal character or right as to the suit property including to have got a portion of the petitioner's land recorded in the LR records in the name of the defendant No. 1.

The petitioner says that the subsequent events should be brought on record by way of amendment for effective adjudication of the issues involved in this suit.

The learned Trial Judge on having refused the amendment has according to the petitioner committed material irregularity and illegality while passing the order impugned. The plaintiff has cited a judgment reported in 2022 SCC Online SC 1128 (Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr.) to submit that in the instant case the amendment should be allowed for effective adjudication of the issues.

It is settled provision of law that a *lis* has to be decided on the basis of the cause of action, if any, that existed on the date of filing of the *lis*. However, subsequent events can be looked into for effective adjudication of the dispute. Even on the basis of subsequent events if a suit has become infructuous the same can be dismissed by exercising powers under Section 151 of CPC. There is, however, a basic caution

in allowing the amendment though it is required to be looked into leniently as merely allowing an amendment does not amount to ipse facto proving the facts sought to be brought in by way of amendment. At the time of trial, the plaintiff has to prove the allegations to get the relief claimed in the suit. The basis caution is that the amendment which attempts to change the nature and character of the suit or intends to take away any admission made in the plaint should not be allowed.

Assuming without admitting that the plaintiff has been dispossessed unlawfully from the suit property, the plaintiff is entitled to seek recovery of possession under the provisions of Section 6 of the Specific Relief Act, 1963 (hereinafter referred to as “the 1963 Act”). However, the fact remains that the petitioner being the plaintiff in the suit has to prove of having dispossessed by the defendants during the pendency of the suit. Although, the petitioner as the plaintiff has in the plaint stated to be in possession of the suit property and apprehends to be dispossessed, the allegation that the plaintiff has been subsequently dispossessed will not take away any admission made by the plaintiff in the plaint but will change the character of the suit which was only for injunction to a suit for recovery of possession. The relief claimed by way of amendment is, however, for evicting the defendants from a portion of the suit property. The nature and character of the suit, therefor, will change particularly when no declaration

has been sought for. Moreover, the proposed amendment is vague so far as to when the plaintiff was dispossessed from a portion of the suit property as the proposed amendment only speaks of the plaintiff being dispossessed. Recovery of possession of a person dispossessed of an immovable property also has a specific period of limitation as provided under Section 6 of the 1963 Act.

Taking into account all these aspects and after going into the order impugned, I do not find any infirmity or irregularity far less any illegality in the order impugned by which the amendment was refused.

The revisional application as a consequence thereof fails and is accordingly dismissed. The interim order has become infructuous and requires to be otherwise vacated and as such stands vacated.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities

(Arindam Mukherjee, J.)