

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS

CO 1862 OF 2025

MOZAMMEL HOSSAIN LASKAR

VS

MADAN MOHAN NASKAR AND ORS.

For the Petitioner : Mr. Tanmoy Mukherjee, Adv.

Mr. A. Pradhan, Adv.

Mr. T.K. Mahapatra, Adv.

For the Opposite Parties: Mr. Sounak Bhattacharya, Adv.

Mr. Sounak Mondal, Adv.

Last Heard on : 18.06.2025

Judgement on : 25.06.2025

CHAITALI CHATTERJEE DAS, J:-

1. This revisional application is directed against an Order dated 8.5.25 passed by learned Civil Judge, Junior Division, Second Court, Baruipur, South 24 Parganas in title Suit number 57 of 2003, whereby the application filed by the plaintiff under Order 1 Rule 10 of CPC is rejected.
2. The petitioner/plaintiff filed a title suit, being Title suit No. 57 of 2003 against the Opposite Parties for a decree of declaration, permanent and

mandatory injunction and recovery of Khas possession of khas schedule property as mentioned in the plaint.

- 3.** The Opposite Parties entered appearance and contested the suit by filing written statement. The present plaintiff thereafter filed an application under Order 39 Rule 1 & 2 of the Code of Civil Procedure and after hearing the parties; the learned Court allowed the said order of injunction in the nature of statuesque as regards, the nature, character, and possession over the suit property till disposal of the suit.
- 4.** It is the case of the petitioner that the suit was fixed for argument, on 21 May 2025, and during the course of argument, it was detected that one Tayub Ali son of Mubarak Ali got 0.962 decimal land of the schedule property and he transferred 0.5 decimal land to the plaintiff retaining certain portion of the land and accordingly the petitioner had to file the application under Order one Rule 10 of the Code of Civil Procedure Praying for addition of party of such Ali for proper adjudication of the matter. The opposite parties filed written objection, and after hearing the same petition has been rejected that if any opportunity is given to the plaintiff at the stage of argument to amount to demolishing the defence. Being aggrieved, thereby, this revisional application has been filed.
- 5.** The Learned Advocate, in course of argument, cited a decision of Hon'ble Supreme Court reported in¹ (Pankaj Bhai Ramesh Bhai ZalaVadiya versus Jetha Bhai Kala Bhai ZalaVadiya (deceased) through legal representatives and others where it was observed that the discretionary power of Court to

¹ (2017) 9 SCC 700

order name of any person, whose presence before the court is necessary to settle all questions involved, to be added in the interest of ends of justice.

6. The Learned Advocate appearing on behalf of the Opposite Party raises vehement objection and argued that the suit was filed for declaration in respect of the suit property against the defendant and in the plaint itself, the fact of devolve of right title and interest in favour of the three sons and four daughters of Mubarak Ali Mondal was very much mentioned which included the name of Tayeb Ali . It was further mentioned that Alkach Ali Alias Tayeb Ali has transferred half decimal land of his share to Muzammel Hussain Lashkar that is the plaintiff by a registered deed of sale dated October 4th, 1982. Therefore, the submission of the Learned Advocate of the petitioner about their knowledge pertaining to the retention of portion of the land by said Tayeb Ali, from the cross-examination of the defendant witness does not have any basis and the application was filed only to demolish the case build up by the defendant.

7. It is further argued that in the written statement, the present Opposite Party specifically denied the case of the plaintiff regarding transfer of half share by said Tayeb Ali. The plaintiff's case, as appears from the plaint is that the property mentioned in ka schedule of the plaint belonged to one Amanat Ali, Khurshid Mondal Gahor Ali Mondal and accordingly their names were recorded in the CS record of rights. Khushid Ali died leaving his only son, Mubarak Ali Mondal, Gahor Ali Mandal died leaving his one son and three daughters and Amanat Ali died issueless and his brother's son and daughters inherited his share. In this manner, Mubarak, Ali Mondal, Mor,

za Mondal, Ajman Biwi, Imran Bibi, Ropan Bibi, inherited the ka schedule property.

- 8.** Subsequently after demise of Mubarak, Ali Mondal, his three sons, including Tayeb Ali Mondal, and two other sons with the widow of the deceased became the owners of the share of Mubarak Ali. Vide a registered deed of sale said Tayeb Ali transferred his half share out of his share to the present plaintiff on October 4, 1982. The other legal heirs of said Mubarak Ali also transferred their entire share in favour of the present petitioners/plaintiff by virtue of a registered deed of sale dated September 24, 1982. The defendant purchased 11 decimal of land of plot number 974.
- 9.** It is their case that in such factual scenario the defendant tried to encroach upon the land of the plaintiff and subsequently encroached certain portion of the disputed land and constructed bamboo fencing and tile shed room. Accordingly, the suit was filed by the plaintiff/petitioner.
- 10.** The case of the defendant on the other hand was a complete denial of the case of the plaintiff and further denied that Tayeb Ali transferred half decimal of land of his share on October 4, 82 to the plaintiff accordingly denied of having any right title interest over the suit property by the plaintiff. According to them, one, Kiran Bala Naskar died, leaving her son, Bama Charan Naskar, who died leaving his one son and four daughters as legal heirs. Said Kiran Bala purchased from Upendra Nath Biswas and Akshay Kumar Biswas 12 decimal of land of plot number 973 and 974 on June 12, 1935. She dispossessed Khorshed Ali Mondal and others forcefully and was in possession. The present defendant and his predecessor were

enjoying the land uninterruptedly for more than 12 years and thereby has accrued the right of adverse possession.

11. In the case of Jetha Bhai Kala Bhai Zala Vadiya (*Supra*), the suit was filed by the applicant for setting aside a sale deed executed in respect of a parcel of land which was purchased by the 7th defendant. On the date of the filing of suit D7 was already dead and the suit was directed to be abated against D7. An application under Order 22 Rule 4 CPC was filed for bringing on record the LRs of the deceased D7, which was dismissed by the Trial Court, followed by an application for impleading the LRs of deceased under Order 1 Rule 10, which was also dismissed by the Trial Court. The question was whether the legal representatives of one of the defendants can be included under Order 1 Rule 10 of the Code where such defendant expired on the date of filing of the suit. It was observed by the Supreme Court in paragraph 10, which reads as follows;

‘Order 1 Rule 10 of the Code enables the court to add any person as a party at any stage of the proceedings, if the person whose presence in court is necessary in Order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit .Avoidance of multiplicity of proceedings is also one of the objects of the said provision. Order 1 Rule 10 of the code empowers the court to substitute a party in the suit who is a wrong person or with a right person. If the court is satisfied that the suit has been instituted through a bona

fide mistake, and also that it is necessary for the determination of the real matter in controversy to substitute a party in the suit, it may direct it to be done. When the court finds that in the absence of the persons sought to be included as a party to the suit, the controversy raised in the suit cannot be effectively and completely settled, the court would do justice by impleading such persons. Order 1 Rule 10 (2) of the code gives wide discretion to the court to deal with such a situation which may result in prejudicing the interests of the affected party if not included in the suit, and where the impledement of the said party is necessary and vital for the decision of the suit.

In paragraph 17 of the said decision it is observed that;

17. The expression. “to settle all questions involved.” used in order 1 Rule 10 (2) of the code is susceptible to a liberal and wide interpretation, so as to adjudicate all the questions pertaining to the subject matter thereof. Parliament in its wisdom, while framing this rule must be held to have thought that all material questions common to the parties to the suit and to the third parties should be tried once for all. The court is clothed with the power to secure the aforesaid result with judicious discretion to add parties, including third parties. There cannot be any

dispute that the party included must have a direct interest in the subject matter of litigation. In a suit seeking cancellation of sale date, as mentioned supra, a person who has purchased the property and whose rights are likely to be affected pursuant to the judgement in the suit is a necessary party and he has to be added. If such purchaser has expired, his legal representatives are necessary parties.

12. The fact of the instant case is totally different than the above case as in the instant case the purpose of filing the application under order Rule 10 of the code is to add a party who is in all possibility was a co-owner and the right of the petitioner may be jeopardised if that person is not allowed. The power of court in dealing with the application filed under Order 1 Rule 10 of the Code is wide enough to consider such application at any stage of proceeding and in the above decision the Hon'ble Supreme Court has elaborately discussed such power of the court.

13. Order 1 Rule 10 of the code of civil procedure reads as follows;

Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been it has been instituted in the name of the right plaintiff ,the court may at any stage of the suit ,if satisfied that the suit has been instituted through a bonafide mistake ,and that it is necessary for the determination of the real matter in dispute so to do ,order any other person to be substituted or added as plaintiff upon such terms as the court thinks just .

The plaintiff is the *dominus litis* and may choose the persons against whom he wishes to litigate however that discretion ought to have been exercise through the lenses of this provision . The provision gives liberty to allow the prayer for addition of by the court even where there is bonafide mistake if his presence is necessary for proper and effective adjudication . In this case when the in the written statement mentioned the name of Taiyeb Ali and denied of having his share in the property the mistake on the part of the petitioner becomes doubtful.

- 14.** The prayer made by the plaintiff /petitioner pertains to declaration end, mandatory injunction against the defendant from disturbing the peaceful possession of the plaintiff in the schedule property after dispossessing the defendants. In this case the plaintiff/petitioner proposed to add said Tayeb Ali as proforma defendants and its argued that since he has no claim against the said person he being a co sharer is to be added since he has a share in the property. Hence the said person may be a proper party whose presence would enable the court to completely adjudicate on all matters. So the petitioner claims Taiyeb Ali to be a co sharer of the disputed property with him. Therefore, in case the suit is decreed in favour of the plaintiff against the present opposite parties/defendant and it is found that minuscule share of the proposed Performa defendant exist; the purpose of adjudication may be frustrated. Moreover, the defendant has claimed an adverse position, and if such addition of party is allowed their rights are not likely to be affected. It is undisputed that the plaintiff is the *dominus litis* the purpose of incorporating such provision is to empower the court to exercise the description when it is necessary for determination of the real

matter in dispute and that can be done at any stage of the proceeding, even without the application of either of the party.

15. In the above facts and circumstances of the case and considering the observation made by the Hon'ble Apex court in the decision relied upon by the petitioner this court finds that the observation of the Learned Trial Court was not correct and the presence of the proposed added party is necessary for proper adjudication and determination of the real dispute in question and therefore the same is liable to be set aside.

16. Hence this civil revisional application stands allowed without costs.

17. The order passed by the Learned Trial Court dated 08.05.2025 is hereby set aside.

18. Urgent Photostat copy if applied be provided to the parties subject to fulfilment of all formalities.

(CHAITALI CHATTERJEE DAS,J.)