

02.07.2025
Item no. 25
Court No.6.
AB

C. O. 2267 of 2025

**Mucha Haque Mondal & Ors.
Vs
Sahajahan Sahaji & Ors.**

Mr. Prantick Ghosh,
Mr. Sourav Guha
Mr. Prasad Bhattacharyafor the Petitioners.

This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against an order dated March 13, 2025, passed by the learned Civil Judge (Jr. Division), 1st Court, Barasat in Title Suit No.681 of 2022.

By the order impugned, the application under Order 6 Rule 17 of the Code of Civil Procedure filed by the plaintiffs/opposite parties herein was allowed.

By the selfsame order, the application under Order 39 Rule 4 of the Code of Civil Procedure filed by the defendants/petitioners herein also stood rejected.

Learned advocate appearing for the petitioners submits that the petitioners have challenged only the portion of the impugned order by virtue of which the application under Order 6 Rule 17 of the Code of Civil Procedure filed by the plaintiffs/opposite parties herein stood allowed.

He further submits that since the order rejecting application under Order 39 Rule 4 of the Code of Civil Procedure is an appealable order, the petitioners are contemplating to challenge the portion of the order rejecting the application under Order 39 Rule 4 of the Code of Civil Procedure by filing an appeal before the appropriate forum. Such submission of the learned advocate for the petitioners is placed on record.

Now, this Court shall consider the propriety of the impugned order insofar as it relates to allowing an application under Order 6 Rule 17 of the Code of Civil Procedure.

The learned advocate for the petitioners submits that the plaintiffs/opposite parties herein sought to change the cause of action of the instant suit by way of the proposed amendment. He further submits that the plaintiffs/opposite parties herein have not disclosed the title deeds by virtue of which they have acquired title in respect of the suit property.

He further submits that the deed which the petitioners sought to incorporate by way of amendment has been disclosed by the defendants/petitioners herein in the written statement.

After going through the plaint, this Court finds that in paragraph (2) thereof, it has been stated that Arman Bibi @ Arman Nessa Bibi and Mobarek Golder were the lawful owners and possessors of the suit dag.

As to how they became the owner of the suit dag were not stated in the original plaint. By the proposed amendment, the petitioners sought to incorporate the fact that the aforesaid persons became the owners by virtue of the registered deed no.1170/1936.

With regard to the submission of the learned advocate for the petitioners that the opposite parties have not disclosed the title deed by virtue of which they have acquired title, it appears from paragraph (2) of the plaint wherein it has been stated specifically that Alam Sahaji while owning and possessing the suit property died leaving behind his only son Akbar Sahaji as his only legal heir and successor. While said Akbar Sahaji was owning and possessing the suit property died leaving behind the surviving plaintiffs as his only legal heir and successor.

Thus, it appears that the plaintiffs have claimed title in respect of the suit property by virtue of inheritance. The plaintiffs only sought to incorporate the particulars of the deed by virtue of which their predecessors acquired title in the property.

After going through the proposed amendment, this Court finds that the same is necessary for the purpose of deciding the real controversies between the parties. Amendment sought for is also formal. It cannot be said that by way of proposed amendment, the plaintiff /opposite parties herein have sought to

change the cause of action for filing the suit. The nature and character of the suit also cannot be said to have been changed by way of the proposed amendment. No prejudice can be said to have been caused to the defendants by way of amendment.

For such reason, this Court is not inclined to interfere with the portion of the order impugned by virtue of which the application under Order 6 Rule 17 of the Code of Civil Procedure stood allowed.

It is, however, made clear that this Court has not entered into the portion of the order impugned by virtue of which the application under Order 39 Rule 4 of the Code of Civil Procedure was rejected and the petitioners are left free to take appropriate steps in that regard before the appropriate forum.

For the above reasons, C. O. No.2267 of 2025 stands dismissed.

There shall be no order as to costs.

(Hiranmay Bhattacharyya, J.)