

A.1004
10.07.2025
Court No.6
BP

C.O. 2293 of 2024

Sanjoy Pramanick & Ors.
-versus-
Sushen Biswas & Ors.

Mr. Tapan Coomar Dey
Ms. Shreya Chatterjee
..for the petitioners

Mr. Atreya Chakraborty
..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 being no. 25 dated 24th April, 2024 passed by the learned Civil Judge (Junior Division), 2nd Court at Ranaghat in Title Suit No. 72 of 2022.

By the order impugned the application under Order 6 Rule 17 of the Code of Civil Procedure stood rejected.

The learned advocate appearing for the petitioners submits that during the pendency of the suit the plaintiff was dispossessed and for incorporating such fact the petitioners have filed the application under Order 6 Rule 17 of the Code of Civil Procedure. In support of such contention he places reliance upon the a decision of a Co-ordinate Bench in the case of Subir Bhattacharya Vs. Sevoke Commosales LLP and Anr. reported at 2025(1) ICC 505(Cal.).

Mr. Chakraborty, learned advocate appears for the opposite parties. He submits that the trial of the suit has

already commenced as the issues have already been framed. In support of such contention he places reliance upon a decision of the Hon'ble Supreme Court in the case of Ajendraprasadji N. Pandey & Anr. Vs. Swami Keshavprakeshdasji N. & Ors. reported at (2006) 12 SCC 1. He further submits that the petitioners have sought to change the measurement of the suit property by way of amendment in order to take away the valuable right of the opposite parties in the suit property which he has acquired by virtue of a deed of gift. He submits that the schedule of amendment does not disclose as to the discrepancy of the measurement of the suit property.

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

The question whether in view of Vidyabai vs. Padmalatha reported at (2009) 2 SCC 409, "commencement of trial" as envisaged in the proviso to Order VI Rule 17 of the Code of Civil Procedure, would mean the date of first hearing, that is the date of framing of issues, or the final hearing of the suit, examination of witnesses, filling of documents and addressing of arguments was put up before the Hon'ble Division Bench for a decision on reference.

The Hon'ble Division Bench in the case of Sree Sree Iswar Radha Behari Jew and Sree Sree Iswar Salgram Jew represented by Basudeb Das vs. Malati P. Soni after noticing several decisions of the Hon'ble Supreme Court including the decision of Ajendra Prasadji N. Pandey

(supra), Baldev Singh vs. Manohar Singh reported at (2006) 6 SCC 496 answered the reference by holding that the expression “commencement of trial” in the proviso to Order 6 Rule 17 of the Code of Civil Procedure would imply the date when the Court first applies its mind after the affidavit of evidence is filed and when the first witness proves his affidavit of evidence or such witness seeks to prove a document for it to be tendered in evidence or the cross examination of such witness begins, whichever is earlier.

It is now well settled that framing of issues does not amount to commencement of trial and the trial commences only when the court first applies its mind.

It is not in dispute that only issues have been framed and the suit has not proceeded thereafter any further. Thus the trial is yet to commence in the case on hand and the proviso to Order 6 Rule 17 of the Code of Civil Procedure does not stand attracted to the case on hand.

The Hon’ble Supreme Court in the case of Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited reported at (2022) 16 SCC 1 has observed that all amendments which are necessary for the purpose of deciding the real controversies between the parties shall be allowed provided the parties seeking amendment does not seek to set up a time barred claim or the proposed amendment results in changing the nature and character of the suit property. It has been further held that delay

alone cannot be a ground for refusing the prayer for amendment.

After going through the schedule of amendment this Court finds that the petitioners have sought to incorporate a subsequent event of dispossession from a portion of the suit property. The proposed amendments are necessary for the purpose of deciding the real controversies between the parties.

A Co-ordinate Bench in the case of Subir Bhattacharya (supra) took note of a decision of Co-ordinate Bench in the case of Smt. Sarala Mahato & Ors. Vs. Smt. Anjali Mahato & Ors. reported at (2022) 4 ICC 912(Cal.) wherein it was held that the story of dispossession followed by insertion of a prayer for recovery of possession is always subject to prove but it has a strong nexus with a denial of possession disclosed by the defendant.

It appears from the impugned order that the learned trial judge rejected the application for amendment on the ground that the proposed amended measurement is not tallying with the documents.

It is well settled that allowing the amendment does not amount to proof of the facts sought to be incorporated and the party has to prove the proposed amendments only after the same is incorporated.

The issue as to whether the petitioners have been dispossessed or not shall be decided only at the time of trial after the petitioners are allowed to incorporate such fact.

For such reason, this Court is inclined to interfere with the order impugned. The order dated 24th April, 2024 is set aside. The application for amendment stands allowed.

The petitioners are directed to file an amended plaint within two weeks from the date of receipt of a server copy of this order. The defendant will be at liberty to file an additional written statement within a period of two weeks after servicing a copy of the same to the learned advocate of the opposite parties before the learned trial judge.

With the above observations and directions, C.O. 2293 of 2024 stands disposed of.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)