

07.08.2025
Item No.05
Ct. No.446
RP

CO 2664 OF 2025
Sri Tapan Dutta Gupta
Vs.
Sri Sachidananda Dutta Gupta & Anr.

Ms. Sohini Chakraborty
Ms. Prajaaini Das

.... For Petitioner

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Anirban Saha Roy

.... For Opposite Parties

1. Learned advocate appearing on behalf of the petitioner submits that the original plaintiff Laxmi Priya Dutta Gupta filed a suit against the opposite parties where the present petitioner was the proforma defendant no.3.
2. The said suit was filed for challenging the deed of gift executed on 28.05.1976 as well as for declaration declaring that the plaintiff is the sole and absolute owner of the suit property. In course of pendency of the proceeding the original plaintiff died and the proforma defendant no.3 was transposed as plaintiff in the said suit.
3. Vide an order dated April 20, 2022 the said prayer was allowed and direction was given to the proforma defendant no.3 to file a fresh plaint. In view of that order on the next date the proforma defendant no.3, being the petitioner herein, after being transposed as plaintiff, filed an application under Order 6 Rule 17

of the Civil Procedure Code for incorporating certain amendment which are very formal and technical in nature and described in the proposed schedule of the amendment application. In addition to the same the plaintiff further prays for amending the plaint in respect of paragraph 20 of the existing plaint for incorporating certain facts which were not there in the original plaint.

4. The learned trial Court vide order dated 20th May, 2025 rejected such application for amendment with the observation that “But inspite of filing fresh plaint, proforma defendant no.3 files an application under Order 6 Rule 17 of CPC.”
5. It is submitted on behalf of the learned advocate for the opposite parties that the Court considered the fact that the proforma defendant no.3 has been transposed as plaintiff and rightly held that despite giving fresh plaint further application for amendment is filed. It is also argued that the nature of amendment proposed will cause prejudice to the interest of the present opposite parties.
6. Having heard the submission of both the parties and on careful perusal of the order impugned as well as the application under Order 6 Rule 17 of the Civil Procedure Code, this Court is of the view that the learned Court passed such order with a wrong notion that “even though a fresh plaint was directed to be

filed the proforma defendant no.3 filed an application for amendment under Order 6 Rule 17 of the Civil Procedure Code” without considering the proposed amendment which are not formal in nature and required application of judicial mind and giving right of audience to the opposite party.

7. In view of the above, this Court is inclined to allow the prayer of the present petitioner and this revisional application stands allowed. The order passed by the learned Court on 20th May, 2025 is hereby set aside. The learned trial Court is directed to hear out amendment application afresh after giving an opportunity of hearing to both the parties and dispose of the application filed under Order 6 Rule 17 of the Civil Procedure Code within a period of one month from the date of receipt of a server copy of this order without granting unnecessary adjournment to either of the parties.
8. Let a copy of this order be sent to the learned Court below for taking necessary steps at once.
9. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

[CHAITALI CHATTERJEE (DAS), J.]