

Sl.20
05.08.2025
Court No.6
BP

C.O. 2772 of 2025

Somnath Das
-versus-
Smt. Maya Das

Mr. Amlan Jyoti Sengupta
Mr. Raja Ram Banerjee
... for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant / counter claimant and is directed against an order dated June 19, 2025 passed by the learned Civil Judge (Junior Division), Bidhannagar in Title Suit No. 231 of 2004.

By the order impugned the application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of the counter claim stood rejected.

Mr. Sengupta, learned advocate appearing for the petitioner submits that during the pendency of the suit Commissioner was appointed and the Commissioner submitted a report. He submits that after the Commissioner submitted a report the instant application was filed for amendment of the counter claim.

It is not in dispute that the application for amendment of the counter claim was filed after the commencement of trial.

In the application under Order 6 Rule 17 of the Code of Civil Procedure the petitioner has not given satisfactory explanation as to why such an application for amendment was not filed prior to commencement of trial.

That apart it appears from the counter claim that the petitioner has specifically stated in paragraph 25(c) that the defendants are entitled to recover the five feet wide strip of land on the eastern side of the premises admeasuring more or less half satak which was contributed by deceased Jnanendra Chandra Das for the purpose of common passage out of his own land who is the predecessor-in-title of the defendants. Thus in the counter claim the petitioner has specified that the width of the common passage is five feet. However by way of amendment the petitioner sought to change the width of the common passage by stating that the common passage is two feet wide. Thus it appears that the petitioner wanted to make out a new case by way of amendment after the commencement of trial which is not permissible. The learned trial judge was right in rejecting the application for amendment.

This Court does not find any infirmity in the order impugned warranting interference under Article 227 of the Constitution of India.

Accordingly, C.O. 2772 of 2025 stands dismissed.

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.)