

Court No. 6
(265719)

11.08.2025
(AD 10)
(S. Banerjee)

CO 2815 of 2025

Sri Biswanath Mukherjee
Vs.
Sri Rabin Ranjan Sakhari & Anr.

Mr. M. Goswami
Mr. P. Goswami

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being no. 93 dated June 3, 2025, passed by the learned Civil Judge (Jr. Division) 2nd Court at Barasat in Title Suit No. 213 of 1988. By the order impugned, the prayer for amendment of the plaint was allowed.

Learned advocate appearing for the petitioner submits that the application for amendment of the plaint was filed after the closure of evidence and at the time of commencement of argument. He submits that proviso to Order 6 Rule 17 of the Civil Procedure Code creates an embargo upon allowing an application for amendment after the commencement of trial. He further submits that the Commissioner was appointed for inspection of the suit property and

he has also submitted a report with regard to the existing condition of the suit property.

The opposite parties herein filed a suit prying for removal of the construction made by the defendant/petitioner herein and for recovery of possession by demolishing the building standing on the suit property.

In the schedule of the plaint the suit property has been described as 2 decimals of land and the measurement have been also indicated therein. By the proposed amendment the opposite parties sought to incorporate in the schedule of the plaint that there is a two-storey pucca construction of the suit property.

After reading the plaint as a whole, including the reliefs claimed wherein the opposite parties prayed for demolition of the construction made by the petitioner, this court is of the considered view that the proposed amendments with regard to the nature of the construction on the suit property is necessary for the purpose of deciding the real controversy between the parties. Though the proviso to Order 6 Rule 17 of the Civil Procedure Code to some extent limits the power of the court to allow an application for amendment after commencement of trial, it is now well-settled that if the proposed amendments are

necessary for the purpose of deciding the real controversy between the parties, the proviso thereto cannot put an absolute embargo on the power of the court to allow such amendments. The learned trial judge was right in observing that the amendment is formal in nature.

This court further finds that the learned trial judge also granted liberty to the petitioner to file an additional written statement on the basis of the amended plaint. Thus, the petitioners cannot be said to be prejudiced by the order allowing the application for amendment of the plaint.

For all the reasons as aforesaid, this court is not inclined to interfere with the order impugned.

Accordingly, CO 2815 of 2025 stands dismissed. However, there shall be no order as to costs.

(Hiranmay Bhattacharyya, J.)