

Sl.35
19.08.2025
Court No.6
BP

C.O. 2995 of 2025

Smt. Sushma Devi alias Sahal & Ors.
-versus-
Smt. Asha Devi Agarwal & Ors.

Mr. Sounak Mondal
Mr. Bijoy Bag
... for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the substituted defendant and is directed against an order dated June 26, 2025 passed by the learned Civil Judge (Junior Division), 1st Court at Barasat, North 24 Parganas in Title Suit No. 826 of 2018.

By the order impugned the application under Order 1 Rule 10 of the Code of Civil Procedure and an application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of the plaint stood allowed.

Mr. Mondal, learned advocate appearing for the petitioners submits that in the original plaint the entire allegation was directed against the present petitioners. He submits that the petitioners are contesting the suit by filing a written statement and it is the specific case of the petitioners that they are the owners of the suit property and are in possession of the same. He further submits that the parties sought to be added by filing an application under Order 1 Rule 10 (2) of the Code of Civil Procedure

are neither necessary parties nor their presence is required for the purpose of effective adjudication of the instant suit. He further submits that the proposed amendment are also not necessary for the purpose of deciding the real controversies between the parties in the suit.

The opposite party no.1 filed a suit for declaration of title and for a further declaration that the defendant nos. 1 to 3 do not have any right, title and interest in or over the suit property in any manner and for a decree for perpetual injunction restraining the defendants and their men and agents from dispossessing the opposite party no.1 from the suit property and/or from interfering with the peaceful possession and enjoyment of the suit property and/or from making any construction and/or from changing the nature and character of the suit property. After filing the said suit the opposite party no.1 filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure and the learned trial judge by an order being no.1(Later) dated 24th December, 2018 allowed the prayer for ad interim injunction thereby restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff/opposite party herein for a specified time frame. The opposite party no.1 filed an application under Section 151 of the Code of Civil Procedure praying for police help for implementation of the ad interim order of injunction. The Inspector-in-Charge,

ECO Park Police Station filed a report and in such report it was stated that one Babosa mandir (within Rammandir premises) is claiming to be in possession of the suit property. The opposite party no.1 filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure praying for adding the persons who are in control of the Balaji Babosa Ram Mandir.

Mr. Mondal, learned advocate appearing for the petitioners would contend that the petitioners are the owners of the suit property and are in possession of the same.

Upon going through the averments made in the said written statement it appears that Ram Mandir, Hanumanji Mandir, Sankarji Mandir, Krishna Mandir and several other mandirs are situated on the suit property. The police report states that one Babosa Mandir, within Ram Mandir premises, is claiming to be in possession of the suit property. Thus, this Court finds that the proposed added parties are necessary parties for the purpose of effective and complete adjudication of the questions involved in the suit.

The instant suit has been filed for declaration of title and for permanent injunction. The purpose for filing the suit as would be evident from the pleadings and the reliefs claimed therein is to protect the possession of the plaintiff in the suit property.

Order 1 Rule 3(2) states that all persons may be joined in one suit as defendants where if separate suits were brought against such persons any common question of law or fact would arise.

Plaintiff is claiming to be in possession of the suit property. The petitioners/defendants Nos.1 to 3 are also claiming title and possession over the suit property. The parties who were sought to be added are also claiming possession in respect of the suit property. Thus, common questions of fact and law would arise and in order to avoid conflict of decisions by way of filing separate suit against the proposed defendants, this Court is of the considered view that the presence of the proposed defendants would enable the Court to decide the questions involved in the suit effectively.

The learned trial judge assigned cogent reasons for allowing the application under Order 1 Rule 10(2) of the Code of Civil Procedure.

The opposite parties filed an application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of plaint. After going through the schedule of amendment this Court finds that the petitioners sought to incorporate the subsequent events by way of amendment. It is well settled that the subsequent events can be allowed to be incorporated by way of amendment. That apart the trial of the instant suit is yet to commence. It is also well settled that an application for amendment filed prior to

commencement of trial should be construed more liberally. To the mind of this Court the proposed amendments are necessary for the purpose of deciding the real controversies between the parties.

For such reason, the impugned order allowing the prayer for amendment of plaint does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

Accordingly, C.O. 2995 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.)