

22
21.08.2025
Ct. No.-6
D.Hira

C.O. 3022 of 2025

**Rash Bihari Mondal & Ors.
Vs.
Munna Das & Ors.**

Mr. Tarak nath Halder.

... for the petitioners

Mr. S. Banerjee.

...for the opposite party no.1

This application under Article 227 of the Constitution of India is at the instance of the plaintiff nos. 1, 4 and 5 and is directed against the orders dated July 22, 2025 and February 6, 2023, both passed by the learned Civil Judge (Junior Division) , 1st Court at Sealdah in Title Suit No. 107 of 2011.

By the order dated February 6, 2023, the application under Order 7 Rule 11 of the Code of Civil Procedure and the application under Order 6 Rule 17 of the Code of Civil Procedure, praying for amendment of plaint stood rejected.

Mr. Halder, learned counsel appearing for the petitioners submits that the petitioners are aggrieved by the portion of the order dated February 6, 2023 whereby the prayer for amendment of plaint stood rejected. The petitioners thereafter, filed an application under Section 151 of the Code of Civil Procedure praying for recalling of the order dated February 6, 2023 which also stood rejected by the order dated July 22, 2025.

The petitioners have challenged both the orders in this Civil Revision Application.

Mr. Halder, learned counsel appearing for the petitioners submits that during the pendency of the suit, some of the flat owners have transferred their flats in favour of the third parties.

He further submits that for the purpose of impleading, the subsequent purchasers as party defendants in the suit as well as for incorporating the subsequent events in the plaint, the petitioners filed an application for amendment of plaint.

He further submits that the learned Trial Judge without considering the application for amendment as a whole rejected the same only by observing that parties cannot be allowed to be added in a suit in exercise of powers under Order 6 Rule 17 of the Code of Civil Procedure, as there is a specific provision under the Code in that regard.

Mr. S. Banerjee, learned counsel appearing for the opposite party no. 1 submits that the learned Trial Judge after considering the application for amendment rightly rejected the same as the petitioners sought to add the subsequent purchasers as party defendants by way of amendment.

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

The petitioners along with others filed a suit for declaration that the opposite parties have got no right, title and interest on 'A' Schedule property and also in 'B' Schedule property which is absolutely meant for common user of all the Flat owners of the apartment and for a decree of Permanent Injunction for restraining the opposite party no. 1 from making any illegal construction on the common passage or on the store room situated on the North East corner and further restraining the opposite parties from creating any obstruction in the user of the common passage and the store room by the plaintiffs and for a decree of Mandatory Injunction directing the opposite party no. 1 to remove the wall erected on the North East corner of the common passage and also of Car parking spaces of plaintiffs on 'B' schedule property and also for a further direction upon the opposite party no. 1 to remove the pad-lock from the store room.

Alleging that the flat owners have transferred their flats in favour of the third parties, the petitioners sought to amend the plaint to implead the subsequent purchasers as parties in the suit by amending the cause title of the plaint.

He further submits that the opposite party no. 2 transferred the 'A' Schedule property and 'B' Schedule property in favour of the opposite party no. 1 in violation of an Order of Injunction and to incorporate such

subsequent events, the petitioners filed an application for amendment of the plaint.

After going through the Schedule of Amendment, this Court finds that the schedule consists of two parts. In the first part from paragraph 1 to 4 that it has been stated that some of the flat owners have transferred their flats in favour of the third parties during the pendency of the suit.

Order 22 Rule 10 of the Code of Civil Procedure states that in cases of assignment, creation or devolution of interest during the pendency of a suit, the suit, may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

It is the specific case of the petitioners that during the pendency of the suit, interest in respect of the suit property devolved upon certain third parties. If that be so, this Court is considered view that the provisions of Order 22 Rule 10 of the Code of Civil Procedure would apply to such case.

The learned Trial Judge was right in holding that when there is a specific provision under Order 22 Rule 10 of the Code of Civil Procedure, the petitioners could not have prayed for impleading such third parties on an application under Order 6 Rule 17 of the Code of Civil Procedure.

This Court further finds that in the second part of the Schedule in paragraphs 5 and 6, the petitioners have stated that certain subsequent events took place and for such season sought to incorporate the same by way of amendment.

However, after going through the impugned order, this Court finds that the learned Trial Judge did not consider the amendment sought for under paragraph nos. 5 and 6 of the Schedule of Amendment while passing the impugned order.

The learned Trial Judge only considered the paragraph nos. 1 to 4 of the Schedule of amendment wherein the petitioners sought to implead the third parties as party defendants in the instant suit.

For such reasons, this Court is inclined to interfere with the order impugned.

At this stage, Mr. Halder, learned advocate appearing for the petitioners prays for leave to file an appropriate application for the purpose of impleading the third parties in whose favour, the flat owners, who are the parties in the instant suit, have transferred their flats in favour of the third parties.

The impugned order is set aside and the learned Trial Judge is directed to consider the application under Order 6 Rule 17 of the Code of Civil Procedure afresh only with regard to the prayer for Amendment as specifically stated in paragraph nos. 5 and 6 of the

Schedule to the application under Order 6 Rule 17 of the Code of Civil Procedure.

The learned Trial Judge is directed to consider the said application after giving an opportunity of hearing to the respective parties and by passing a reasoned order. With regard to the prayer for addition of the party, as stated in paragraph nos. 1 to 4 of the Schedule of amendment, the petitioners will be at liberty to take out an appropriate application in that regard.

If such an application is taken out, the learned Trial Judge shall consider and dispose of the same in accordance with law by passing a reasoned order and after giving an opportunity of hearing to the opposite parties and also to file a written objection to such application.

With the aforesaid directions, CO No. 3022 of 2025 is disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)