

20
25.08.2025
Ct. No.-6
D.Hira

C.O. 3063 of 2025

**Rabiul Haque & Anr.
Vs.
Mohammad Shahnawaz & Ors.**

Mr. M. Maiti,
Mr. S.M. Ismal.

...for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order no. 87 dated June 16, 2025 and an order no. 43 dated August 7, 2023, both the orders passed by the learned Civil Judge, (Junior Division), 2nd Court, Purba Bardhaman in Title Suit No. 71 of 2017.

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

Thereafter, the petitioners filed an application under Section 151 of the Code of Civil Procedure praying for recalling the order dated August 7, 2023 which stood rejected by the order dated June 16, 2025.

Mr. M. Maiti, learned advocate appearing for the petitioners submits that during subsisting of an order of temporary injunction the defendants/opposite parties encroached upon the property of the petitioners by raising a boundary wall thereby obstructing the ingress and egress of the petitioners to his property.

The petitioners filed a suit for declaration of title in respect of 'A-1' and 'A-2' scheduled property and for permanent injunction restraining the defendants from disturbing the peaceful possession of the plaintiffs/petitioners in respect of the said properties.

The learned Judge of the Appellate Court in Miscellaneous Appeal No. 33 of 2017 passed an order dated May 27, 2019 thereby restraining the defendants/opposite parties by way of an *ad interim* temporary injunction not to encroach upon and not to disturb the peaceful possession of the plaintiffs in the 'A-1' and 'A-2' scheduled property.

Alleging that during the pendency of the suit, the defendants have raised a boundary wall at the eastern side on the 12 feet wide passage by covering the same thereby creating an obstruction to the egress and ingress to the petitioners' property, the petitioners filed an application under Order 6 Rule 17 of the Code of Civil Procedure praying for incorporating the said subsequent events.

After going through the schedule of the proposed amendment, this Court finds that the petitioners also sought for inclusion of a new paragraph in the prayer portion of the plaint praying for a declaration that the plaintiffs have right of way for their egress and ingress through the passage running from south to north at the adjacent eastern boundary of plot 74 that is, at the

adjacent eastern side of the defendants residential property.

From the schedule of the amendment, it is evident that the petitioners have alleged that the opposite parties have encroached upon the said passage by constructing a boundary wall. Neither any prayer for mandatory injunction for removal of the construction nor any prayer of the encroached portion has also been sought for.

The learned Trial Judge was right in holding that without any prayer for recovery of Khas possession of the encroached portion, the proposed amendment was liable to be rejected. To the mind of this Court, the learned Trial Judge was right in rejecting the prayer for amendment of the plaint.

After going through the order dated August 7, 2023, this Court finds that the same was passed after hearing the respective parties.

Petitioner filed an application under Section 153 of the Code for amendment of plaint for incorporating the facts which stood rejected by the order dated 07.08.2023.

The learned Trial Judge was right in holding such application was barred by res judicata as an application for incorporating same facts was rejected by order dated 07.08.2023.

In view thereof, this Court is not inclined to interfere with the order impugned.

Accordingly, CO 3063 of 2025 stands disposed of without interfering in the order impugned.

It is however made clear that dismissal of the Civil Revision Application shall not preclude the petitioners from taking appropriate steps in accordance with law.

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.)