

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 3035 of 2024
With
CAN 1 of 2025

Srimatya Kalpana Dolai & Ors.
-Versus-
Sri Tapan Kumar Dolai & Ors.

For the petitioner : Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das

For the Opposite parties : Mr. Amit Baran Dash

Heard On: : **15.07.2025**

Judgment On: : **15.07.2025.**

Hiranmay Bhattacharyya, J.

1. Though this matter is appearing under the heading “Extension of Interim Order”, since the interim order expired long back, the parties were allowed to make submissions on merits of the civil revisional application. Accordingly the learned advocate for the respective parties advanced their argument on the main civil revisional application and the same is taken up for hearing by treating the same as on the day’s list with the consent of the learned advocates for the respective parties.

2. This application under Article 227 of the Constitution of India is at the instance of the defendant nos. 1, 2 and 3 and is directed against an

order being no. 33 dated July 26, 2024 passed by the learned Civil Judge (Junior Division), 1st Additional Court at Contai, Purba Medinipur in Title Suit No. 118 of 2021.

3. By the order impugned the application under Order 6 Rule 17 of the Code of Civil Procedure filed by the plaintiffs/opposite party nos. 1 and 2 herein for amendment of plaint stood allowed.

4. Mr. Mukherjee, learned advocate appearing for the petitioners submits that the prayer of the opposite parties for amendment of plaint on an earlier occasion was rejected in part. He further submits that the opposite parties sought to incorporate the portion of the amendment which was rejected by an earlier order passed by the learned trial judge in a round about way. He further submits that the petitioners sought to withdraw the admissions made in the plaint and tried to make out a new case which is contradictory to the case made out in the original plaint. He submits that the prayer for amendment of plaint and a prayer for amendment of the written statement stand on different footing and it is not permissible to add, alter or substitute a new cause of action by way of amendment of plaint. In support of such contention he places reliance upon a decision of the Hon'ble Supreme Court in the case of Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors. reported at (2007) 5 SCC 602. He further submits that mutually destructive pleas cannot be allowed to be taken by way of amendment of plaint. In support of such contention he places reliance upon a decision of the Co-ordinate Bench in the case of Debendra Nath Chatterjee Vs. Vivekananda Banerjee & Anr. reported at 2010(4) CHN (Cal) 252.

5. The learned advocate appearing for the opposite plaintiffs/opposite parties submits that the trial of the instant suit is yet to commence. He further submits that the proposed amendments are necessary for the purpose of deciding the real controversies between the parties. He further submits that the petitioners did not file any written objection against the application for amendment but has challenged the same by filing the civil revisional application. He submits that in view of the statements made in paragraph 14 of the written statement it cannot be said that the plaintiffs sought to withdraw the admissions by way of amendment.

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

7. The opposite parties filed a suit for declaration of title and for permanent injunction. The petitioners herein are contesting the said suit by filing a joint written statement. In the said written statement the petitioners have also set up a counter claim praying for declaration that the defendant no.1 is the owner in respect of the property mentioned in schedule "A" and the defendant no.2 is the owner of the property mentioned in schedule "B". The petitioners also prayed for a decree of permanent injunction restraining the opposite parties herein from creating any disturbances in the peaceful possession of the petitioners in respect of the schedule "A" and schedule "B" property of the counter claim. It is not in dispute that prior to filing of the present application for amendment of plaint the opposite parties filed an application for amendment of plaint. Such application was allowed in part excepting the point no.3 of the schedule of proposed amendment by an order dated 12th February, 2024.

8. After going through the order dated 12th February, 2024 this Court finds that the learned trial judge has recorded that if the point no.3 of the proposed amendment is allowed then it will ruin the defence case. The said order has attained finality as the same was not challenged by the parties before the superior forum. Thereafter the opposite parties filed the instant application for amendment of plaint. From the Schedule of amendment it appears that the opposite parties sought to incorporate a new paragraph being paragraph 7(ka) after paragraph 7. In paragraph 1 of the schedule of amendment it appears that the opposite parties sought to incorporate new facts by way of amendment. In paragraph 2 of the schedule of amendment this Court finds that several portion of paragraph 8 of the original plaint was sought to be deleted and in its place some new facts were sought to be incorporated.

9. The learned trial judge while passing the impugned order returned a finding that the plaintiffs want to insert some facts without deleting the existing fact. It appears to this Court that the learned trial judge did not properly apply its mind while considering the application for amendment of plaint as several portion of the plaint was sought to be deleted.

10. That apart when an earlier application for amendment was rejected, the learned trial judge ought to have considered whether the amendment sought for by virtue of the present application under Order 6 Rule 17 of the Code of Civil Procedure is an attempt to incorporate the facts which were rejected by the order dated 12.02.2024 in an indirect way.

11. The learned trial judge without taking note of the aforesaid facts only observed that the proposed amendments are necessary for the complete

and proper adjudication of the suit. Merely by saying that the proposed amendments are necessary for the purpose of complete and proper adjudication of the suit would not suffice and the learned trial judge was required to consider the proposed amendments and assign reasons as to why, according to the learned trial judge, the proposed amendments would be necessary for the purpose of deciding the real controversies between the parties.

12. In **Usha Balashaheb Swami (supra)** the Hon'ble Supreme Court held that the general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute case of action or the nature of the claim applies to amendments to plaint. It has been further observed that adding, altering or substituting a new cause of action in the plaint may be objectionable.

13. In **Debendra Nath Chatterjee (supra)** after taking note of the fact that by way of proposed amendment the party seeking the amendment sought to replace certain facts by deleting certain portions observed that mutually destructive pleas cannot be allowed to be introduced by way of amendment.

14. It is equally well settled that admissions cannot be withdrawn but the same may be explained by way of amendment.

15. The learned trial judge did not consider as to whether the opposite parties sought to explain the admissions or to withdraw the admissions by way of amendment.

16. Since the learned trial judge did not apply its mind as observed hereinbefore, the application for amendment of plaint is required to be

considered afresh. For such reason this Court is inclined to set aside the impugned order and remand the matter back to the learned trial judge for deciding the application for amendment afresh in the light of the observations made hereinbefore.

17. Accordingly, the impugned order is set aside. The application for amendment of plaint stands restored to the file of the learned Civil Judge (Junior Division), 1st Additional Court at Contai. The learned trial judge is requested to decide the application for amendment of plaint afresh after giving an opportunity of hearing to the respective parties and by passing a speaking order in the light of the observations made hereinbefore. The learned trial judge is requested to dispose of such application as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

18. Accordingly, C.O. 3035 of 2024 stands allowed. The application being CAN 1 of 2025 is also disposed of.

19. There shall be, however, no order as to costs.

20. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)