

C.O. 3206 OF 2023

17.07.2025

Sl no. 109

Ct no. 25

P.M.

Smt. Sarada Singh

- Vs -

Sri Sankar Prasad Shaw.

Mr. Sukanta Chakraborty,

Mr. Anjan Ganjan,

Mr. P.K. Singh

... for the petitioner

Mr. Shambhu Nath Ray,

Ms. Sharmistha Roy Chowdhury,

Ms. Munmun Das

... for the opposite party

1. The present petition has been filed challenging the order No. 30 dated 4th July, 2023 in title suit No. 1546 of 2019 passed by the learned Civil Judge, Junior Division, 1st Court, Howrah allowed the application of the defendant/opposite party for amendment of the written statement.
2. The defendant/opposite party by virtue of amendment has sought to incorporate the fact that vendor of the plaintiff was not owner of the suit property.
3. The learned counsel for the petitioner/plaintiff submits that the learned Trial Court has allowed the application of the amendment ignoring, that by virtue of amendment party

cannot be allowed to withdraw the admission made by them in the written statement.

4. Learned counsel further submits that by virtue of amendment the nature and character of the suit has totally changed and, therefore, the impugned order is liable to be set aside.
5. Learned counsel for the defendant/opposite party submits at the outset that the petition itself is not maintainable.
6. Learned counsel submits that under Article 226 of the Constitution of India the jurisdiction of the Court is very limited. The Court can interfere into the order only if there is an apparent illegality or perversity in the order under challenge.
7. The Court has considered the submissions. Undoubtedly the Court in the revisional jurisdiction has a very limited scope, it can only interfere then there is an apparent illegality or perversity. The Court cannot sit as an appellate court while exercising the revisional jurisdiction.
8. In the revisional jurisdiction the Court cannot substitute its opinion with the opinion of the learned Trial Court.

9. The law regarding amendment is very liberal. The legislature in its wisdom has provided that at any stage of the proceedings the Court may allow to alter or amend the pleadings. However, the rider is that such amendment should be necessary for the purpose of determining the real question in controversy between the parties. The delay in moving such an application may also be ignored, provided the amendment sought are necessary for decision of the real controversy between the parties. It is also a settled proposition that the Court while considering the amendment will not go into the merits of the case.
10. It is a settled proposition that by virtue of amendment a party cannot be allowed to take away benefit which has accrued to the other part. It is also a settled proposition that by virtue of amendment, the nature and character of the suit cannot be changed.
11. However, in the present case the defendant/opposite party at the outset has denied that the plaintiff/petitioner was the owner or landlord of the premises in dispute.

12. The Apex Court in **North and Eastern Railway Administration vs. Bhagwan Das** AIR 2008 Supreme Court 2139 delineating the scope of Order 6 Rule 17 and inter alia held as follows :

15. In so far as the principle while govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C. (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 C.P.C. postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil & ors. which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the

amendment would cause him an injury which could not be compensated in costs (Also see: Gajanan Jaikishan Joshi Vs Prabhakar Mohanlal Kalwar).

13. The Apex Court in **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr.** (2022) 16 SCC 1 inter alia held that all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side.
14. Thus, the only pre-condition is that amendment should be for effective and proper adjudication of the controversy between the parties and it should not cause injustice to two other parts.
15. In the present case the amendment which has been sought to be incorporated regarding the fact that vendor of the plaintiff was not owner of the suit.
16. The Court considers that if the defendant/opposite party has denied the ownership of the plaintiff at the outset the fact brought to be incorporated by way of amendment is also required to be brought on

record. Though it is correct that the defendant/tenant cannot challenge the title of the plaintiff/landlord, however as has been rightly observed by the learned Trial Court that at this stage the Court may not enter into the merits of the case.

17. It has also been stated at bar that the cost which was imposed by the learned Trial Court has been accepted by the petitioners/plaintiff.

18. In view of the discussion made herein above there is no illegality or perversity in the impugned order. Hence petition is dismissed.

19. The petitioner may file rejoinder to the amended written statement for the completion of the pleadings.

20. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Dinesh Kumar Sharma, J.)