

Sl.28
18.09.2025
Court No.6
BP

C.O. 3482 of 2025

Sri Sandip Roy & Ors.
-versus-
Smt. Sikha Saha & Ors.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das
... for the petitioners

Mr. A. Mookherji
Mr. Prithish Chandra
Mr. V. Chaturvedi
..for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order being no. 29 dated July 31, 2025 passed by the learned Civil Judge (Junior Division), 1st Court at Sealdah in Title Suit No. 236 of 2022.

By the order impugned the application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of the plaint stood rejected.

Mr. Mukherjee, learned advocate appearing for the petitioners submits that though the suit was filed for declaration and mandatory and permanent injunction but the relief sought for in the plaint would imply that the petitioners sought for specific performance of contract. He submits that the trial of the instant suit is yet to commence and for the purpose of incorporating the appropriate reliefs and for the purpose of valuing the suit correctly, the application for

amendment of plaint was filed. He further contended that the issue of limitation in the case on hand being a mixed question of law and fact could have been made an issue in the suit after allowing the prayer for amendment.

The learned advocate appearing for the opposite parties submits that the petitioners have sought to change the nature and character of the suit by way of amendment. He submits that by way of amendment the petitioners sought to change the nature of the suit from that of a declaratory suit to a suit for specific performance of contract. He further submits that the petitioners sought to amend the valuation of the suit and if the valuation of the suit is allowed to be amended as sought for by the petitioners, the same would oust the pecuniary jurisdiction of the learned trial judge.

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

After going through the averments made in the plaint and the reliefs claimed therein this Court finds that the petitioners sought for a declaration that pursuant to an agreement dated November 11, 2013 made between Tulsi Saha, since deceased that is the predecessor-in-interest of the defendants/opposite parties and the petitioners that the petitioners are entitled to 30% of the built up area of the construction to be made and erected at the suit property and for a

further declaration that the defendants are bound to act strictly in accordance with the agreement and for permanent and mandatory injunction.

After going through the averments made in the plaint this Court finds that though the relief was claimed for in the form of declaration but in effect the object behind filing the suit was for specific performance of the agreement dated November 11, 2013.

It is not in dispute that the trial of the instant suit is yet to commence.

The petitioners applied for amendment of plaint for incorporating the relief in the nature of specific performance of the agreement dated November 11, 2023 and sought to amend the valuation of the suit as applicable in case of a suit for specific performance of contract. In the schedule of amendment the petitioners have sought to incorporate other relevant facts in support of the relief for specific performance of contract.

The application for amendment was filed on 5th February, 2025. Since this Court has already observed that the basic foundation of the suit was for enforcement of the agreement dated November 11, 2013 and the foundational fact for the reliefs sought to be incorporated by way of amendment was already existing in the original plaint the question of limitation for the purpose of allowing the amendment would not arise in the case on hand.

Whether the prayer for specific performance of the agreement would be barred by limitation as on the date of presentation of the plaint cannot be decided at this stage and the same has to be decided at the appropriate stage upon framing an issue in that regard.

Though the learned advocate appearing for the opposite parties may be right in contending that if the proposed amendments are allowed, the same would oust the pecuniary jurisdiction of the learned trial judge, it is well settled that the same cannot be the ground for rejecting the prayer for amendment. The proper course which is to be followed in such a situation is that the amendment should be allowed and thereafter the plaint should be returned for presenting before the appropriate forum.

For the reasons as aforesaid, this Court is inclined to interfere with the order impugned and to allow the application for amendment of plaint. Accordingly the impugned order is set aside. The application for amendment of plaint stands allowed. The learned trial judge is directed proceed in accordance with law in terms of this order.

With the above observations, C.O. 3482 of 2025 stands allowed.

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.)