

Sl.8
24.10.2025
Court No.6
BP

C.O. 3540 of 2025

Sk. Soukat Ali Mondal & Ors.
-versus-
Lalmoni Devi & Ors.

Mr. Debanjan Mukherjee
... for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order dated 13th May, 2025 passed by the learned Civil Judge (Junior Division), Additional Court at Alipore in Title Suit No. 131 of 2023.

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

Mr. Mukherjee, learned advocate appearing for the petitioners submits that at the time of filing of the plaint the petitioners were not aware of the actual date of death of Rajdew Mallah and very recently i.e. on November 7, 2024 he came to know that the said Rajdew Mallah died in the month of December, 2001 at his native place at Bihar. He submits that in order to correct the date of death of the said Rajdew Mallah the application for amendment of plaint was filed. He submits that such an error can be allowed to be corrected by way of amendment of the plaint.

It is not in dispute that the application for amendment of the plaint was filed long after the

commencement of trial and when the suit was at the argument stage. In paragraph 3 of the plaint it has been stated that Rajdew Mallah died in the year 1998 and thereafter his wife also died in the year 1999 at their native place and after the death of Rajdew Mallah and his wife, his son Balchand Mallah wrongfully grabbed the suit property and started to illegally occupy the suit property as a trespasser therein. The instant suit has been filed by the petitioners herein treating the defendants as trespassers in respect of the suit property. In the affidavit-in-chief of PW-1, the plaintiff no.1 stated in paragraph 4 that Rajdew Mallah died in the year 1998. During cross-examination the PW-1 also reaffirmed on oath that Rajdew Mallah died in the year 1998. The petitioners have filed the application for amendment of plaint. From the schedule of the application for amendment of plaint it appears that the petitioners sought to state that Rajdew Mallah died in the month of December, 2001 instead of 1998.

Considering the pleadings of the respective parties this Court is of the considered view that the learned trial judge was right in observing that the date of death of Rajdew Mallah is closely related to the primary issue framed in the suit as to whether the suit is maintainable in law. In the written statement the opposite parties have specifically stated that after the demise of Rajdew Mallah his son namely, Balchand Mallah became the lawful tenant of the said tenanted portion of the premises and

regularly paid rent to the landlord without any disturbance from any corner. Thus it appears that the date of death of Rajdew Mallah is a relevant fact and goes to the root of maintainability of the instant suit. It is well settled that the Court should be liberal in allowing an application for amendment of plaint if the proposed amendments are necessary for the purpose of deciding the real controversies between the parties. It is equally well settled that an amendment which seeks to displace the other side should not be allowed.

After going through the schedule of amendment this Court holds that the proposed amendment, if allowed, would displace the opposite parties and would result in withdrawal of admission made by the plaintiffs which is not permissible.

The learned trial judge assigned cogent reasons for rejecting the application for amendment of plaint.

This Court is not inclined to interfere with the impugned order.

Accordingly, C.O. 3540 of 2025 stands dismissed.

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.)