

19.11.2025
SL No.43
Court No.6
(gc)

CO 3964 of 2025

**Sri Pradipta Mundle
Vs.
Lt. Col. Sanjay Das & Ors.**

Mr. S.T. Mina,
Mr. Pratick Sardar

...for the Petitioner.

1. The petitioner is aggrieved by an order dated July 29, 2025 passed by the learned Civil Judge (Sr. Divn.), 2nd Court, Alipore, South 24-Parganas in the Title Suit No.1683 of 2009. By the order impugned, the learned Court rejected the application for amendment of the plaint. The suit is for partition. The petitioner's contention is that the application for amendment is necessary for proper adjudication of the disputes between the parties and to enable the plaintiff to exercise his rights under Section 44 of the Transfer of Property Act as also the right of pre-emption.
2. The petitioner wanted to incorporate facts which came to the knowledge of the petitioner sometime in 2019.
3. The fact that, the defendant no.12 had entered into an agreement for sale on April 20, 2009 with one Mr. Arshad Ali to transfer on sale, a portion of the ground floor flat, at premises no.1/1, Nazar

Ali Lane, P.S. Karaya, Kolkata – 700019 for a valuable consideration of Rs.23,00,000/-, and the defendant No.9 entered into an agreement for sale with Md. Shaukat Ali, Hasbun Nisha on January 10, 2011 to seal entire 2nd and 3rd floor of the building within the schedule suit property, at premises no.1/1, Nazar Ali Lane, P.S. Karaya, Kolkata- 700019, for Rs. 54,50,000/- were sought to be brought on record.

4. The suit had reached the stage of cross-examination of the D.W.1. The suit is one for partition by metes and bounds. If Mr. Arshad Ali and Md. Shaukat Ali are ultimately sold the property, they will claim through the defendants (vendors) who admittedly have a share in the suit property.
5. Under such circumstances, when the petitioner's case is that the title has not yet passed and only an agreement for sale had been included, there is no requirement under the law for allowing the amendment at the concluding stage of the suit. Assuming that these issues came to the knowledge of the petitioner in 2019, there is no reason why the petitioner had to wait till 2005 and after the cross-examination of the D.W.1 had commenced, to file the amendment application.
6. This Court finds that the said amendment will not have any bearing on the suit. The proviso to

Order 6 Rule 17 also stipulates that an amendment cannot be allowed as a matter of course, after commencement of trial and such amendment can only be allowed if in spite of due diligence, the party seeking amendment could not have brought such fact before the court or such fact came to the knowledge of such party after commencement of trial. This amendment is irrelevant and mala fide, and cannot be allowed.

7. The revisional application is accordingly dismissed.
8. There shall be no order as to costs.
9. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)