

12.12.2025

Sl. No.680.

Mithun

Ct.No.29.

CO 3841 of 2024

Mondal Jahangir Ali & Ors.

Vs.

Monirul Islam & Ors.

Mr. Rwitendra Banerjee,
Mr. Shibasis Chatterjee

...for the petitioners

Mr. Partha Pratim Roy,
Mr. Anirban Das,
Ms. Poulami Chakraborty

...for the opposite party.

Affidavit-of-service filed on behalf of the
petitioners is taken on record.

This is an application wherein petitioner has
assailed the order dated 07.05.2022 passed in other Suit
No. 193 of 2016 by which learned Trial Court rejected
the plaintiff's prayer for amendment on the ground that
the proposed amendment is after thought and the same
cannot be designated as just or necessary for the
purpose of determining the real controversy between the
parties.

Being aggrieved by the said order, learned Counsel
for the petitioners, Mr. Banerjee submits that by dint of
the proposed amendment, the plaintiff does not want to
change the nature and character of the suit nor the
prayer made in the plaint. Plaintiff's in their plaint had
categorically pleaded that the Left thumb impression (in

short LTI) in the impugned Heba nama deed is not the LTI of the alleged doner Khosjan Bewa. Now in the amendment application plaintiff only seeks to incorporate that the fingerprint appearing in the impugned sale deed and the admitted thumb impression of petitioner/plaintiff's mother Khosjan Bewa appearing in other deeds including deeds executed in favour of defendants/opposite party herein can be compared by a handwriting expert to reveal the truth. However, learned Court below failed to consider that there is no inconsistency in the amendment sought to be introduced and the plaint case. Therefore, the order impugned is perverse and not sustainable in the eye of law and therefore is liable to be set aside invoking jurisdiction of this Court under Article 227 of the Constitution of India.

Mr. Anirban Das, learned Counsel appearing on behalf of the opposite party raised objection contending that plaintiff in his amendment Application had stated that due to innocent inadvertence, they could not incorporate proposed amendment in the plaint which cannot be a ground to allow such prayer. He further submits that the LTI appearing in the impugned document is genuine and, therefore, such comparison is not necessary for the purpose of adjudication of the suit.

I have considered submission made on behalf of both the parties. On perusal of the plaint, it appears that plaintiff in his plaint has specifically stated in Paragraph 3 that the plaintiffs came to know on 4.11.2016 that one *Hebanama* has been executed in the name of Khosjan Bewa on the basis of false personification. He has specifically averred in the plaint that the LTI appearing in the impugned deed is not the LTI of Khosjan Bewa, as Khosjan Bewa never executed any deed of gift in favour of defendant no.1 and 2.

Accordingly, the plaintiff in his plaint, has prayed for declaration that the deed executed in favour of the defendant nos.1 and 2 allegedly by said Khosjan Bewa is a fraudulent deed and also for permanent injunction restraining defendant nos.1 and 2 from claiming right, title and interest in the suit property.

Now, it appears that by way of amendment, plaintiff only wants to incorporate that Khosjan Bewa during her lifetime had also executed other deeds where her LTI is appearing and genuinity of said deeds were never under challenge. Accordingly, the LTI appearing in impugned deed is required to be compared and examined by a fingerprint expert with the LTI appearing in the admitted deeds.

On careful perusal of plaint it appears that the real controversy between the parties in the instant suit

is whether plaintiff's mother executed said impugned Hebanama deed in favour of defendants by putting her LTI on the said Hebanama deed.

In ***Rajesh Kumar Agarwal & others Vs. K.K. Modi & Others*** reported in (2006) 4 SCC 385, Supreme Court is of clear view that courts should allow all amendments that may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side. Therefore the "real controversy" test is the basic or cardinal test and it is the Primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. Here the real dispute between the parties is whether "kha" schedule mentioned deed to plaint is collusive, fraudulent or void deed or not.

The other ground for refusal by the court below is that proposed amendment is after thought made at a belated stage. It is not in dispute that proposed amendment was filed before commencement of trial. However even if proposed amendment is filed at a belated stage, it cannot be refused, if it is found that for deciding the real controversy between the parties it is necessary, unless it causes prejudice to the other side. The proposed amendment, if allowed will also no way change the nature or character of the suit as even after

proposed amendment, suit will remain a suit for cancellation of the Hebanama deed. Moreover proposed amendment if allowed, the defendants will not be prejudiced in any way, if they get the chance of filing additional written statement. The proposed amendment should therefore be allowed for the purpose of shortening the litigation, preserving the rights of both the parties and to subserve the ends of justice. Court below ought to have allowed the purposed amendment for the purpose of adjudicating the matter in dispute once for all.

In view of the aforesaid discussion, CO 3841 of 2024 is allowed.

The schedule of amendment made in the amendment application dated 26.11.2019 be incorporated in the plaint.

Plaintiff is directed to file an amended plaint within a period of four weeks from the date of communication of this order. After filing such amended plaint, defendants will be at liberty to file additional written statement, if any, within four weeks thereafter.

Parties to act on the server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

(Dr. Ajoy Kumar Mukherjee, J.)