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2025  
Ct. No. 237

**C.R.R. 3938 of 2024**  
**Smt. Gulachi Devi**  
**Vs.**  
**Calcutta Diocesan Trust Association (Private) & Ors.**

***Mr. Pinaki Ranjan Patra***

***...For the Petitioner***

***Mr. Debjit Mukherjee***

***Mr. Koustav Bhattacharjee***

***Ms. Priyanka Jana***

***...For the Opposite Party No. 2***

This application has been preferred against the order dated 11.7.2024 passed in Title Suit No. 116 of 2023 by the learned Civil Judge (Senior Division), 2<sup>nd</sup> Court at Howrah. By the order impugned learned Trial Court rejected the plaintiff's prayer for amendment filed under Order VI, Rule 17 of the Code of Civil Procedure.

It has been contended by the learned Counsel appearing on behalf of the petitioner that the petitioner filed amendment application for rectification of formal mistake and also for adding prayers that the Deed of Lease dated 15.11.2010 be declared as void, illegal and inoperative and also for a declaration that the plaintiff is entitled to get recovery of possession in respect of the suit property mentioned in Schedule 'A' to the plaint. However, learned Court below rejected the entire amendment application though the Trial has not yet been commenced and ignoring the weighty consideration that amendment applications should be dealt with liberally.

Learned Counsel appearing on behalf of the opposite party No. 2 raised strong objection contending that previously while disposing

of a Civil Revisional Application, being C.O. 3385 of 2018, this Court clearly held that plaintiff lacks sufficient assertion of plaintiff's possession over the suit property and now in order to fill-up lacuna, the plaintiff has filed the aforesaid prayer for cancellation of deed and for recovery of possession which is not maintainable in the eye of law. He further contended that the suit was filed in the year 2017 and in the plaint it has been clearly admitted in paragraph 12 that they are in possession of copy of the impugned Deed of Lease dated 15.11.2010 and accordingly at least on the date of filing of the suit they had the knowledge about the existence of the Deed dated 15.11.2010 and they ought to have prayed for cancellation of Deed or recovery of possession within three years but beyond the aforesaid period, prayer for amendment in the year 2023 is hopelessly barred by limitation and cannot be allowed as by this time defendant acquired valuable rights against the plaintiff, which cannot be taken away on account of delay in filing application.

Having considered the facts and circumstances of the case it appears from the averment of plaint filed in 2017 that plaintiff admitted in para 12 of the plaint they already received a copy of lease deed dated 15.11.2010, however they did not offer any challenge when the suit was filed, nor prayed for recovery of possession and trial Court by order dated September 11, 2018 held plaintiff's claim of possession of suit property is not sustainable and this Court had given liberty to the defendant to question maintainability of suit for want of prayer for

recovery of possession.

The limitation for such challenge is three years. Naturally a fresh suit to challenge the said lease deed or prayer for recovery of possession has become non-maintainable, being barred by limitation and thereby right has accrued by defendant with reference to challenge the deed and/or prayer for recovery of possession. Now if the prayer for amendment is allowed it will certainly cause prejudice to the defendant.

In such view of the matter, I do not find any illegality or perversity in the order impugned and as such it does not call for any interference by this Court invoking jurisdiction under Article 227 of the Constitution of India.

The revisional application, being C.R.R. 3938 of 2024 thus stands dismissed.

*(Dr. Ajoy Kumar Mukherjee, J.)*