

JPD-9
Ct No.01
23.07.2025
(sss)

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 68 of 2025

Sri Uttam Kumar Biswas
Vs.
Sri Monohar Goali and Ors.

Mr. Bapi Sarkar,
Mr. Roumyadip Saha

....For the Petitioner.

Mr. Rajat Das,
Mrs. Anumita Lahiri

...For the Opposite Party nos. 1 to 5.

1. Heard learned counsel for the parties.
2. By the impugned order, an application for amendment of the plaint in the suit filed by the plaintiff/revisionist petitioner was rejected.
3. The rejection was primarily on two grounds – first, that no plausible explanation for the delay of about ten years in filing the amendment application was furnished; secondly, that the relief sought to be introduced by way of the amendment was time-barred.
4. As per the pleadings sought to be incorporated by virtue of the amendment application, on August 7, 2015, that is, almost ten years prior to the making of

the amendment application, the defendant nos. 1 to 5 had allegedly come to the suit land and made one tin shed structure by four cemented pillars and two bamboo poles as well as fixed a signboard displaying the name of Bhaktinagar Netaji Youth Club on the pillar. As per the said proposed amended pleadings, the defendants had also kept two 'Rath's (thela gari) on the suit land on the said date.

5. The learned Trial Judge held that when the amendment application was filed, the evidence of the parties had already been concluded and arguments were about to commence in the suit. No plausible explanation for the delay of about ten years in filing the amendment application, by waiting till after the completion of the evidence, was furnished by the defendant/petitioner.

6. That apart, it was held that the relief now sought to be incorporated, being a decree directing the defendants to demolish and remove all illegal structures and the 'Rath' from the suit land is by now time-barred.

7. Learned counsel appearing for the petitioner submits that the relief sought to be introduced by the amendment is in the nature of one for recovery of possession and is accordingly not time-barred, being within twelve years. Moreover, it is submitted that the learned Trial Judge also took into consideration in the impugned order the previous dismissal of an application

filed under Order XXXIX Rule 2A by the petitioner, which was on a different allegation than the one sought to be incorporated by virtue of the amendment. Since the said miscellaneous case under Order XXXIX Rule 2A of the Code of Civil Procedure was on a different instance of violation of the ad interim order of status quo granted by the learned Trial Judge, the said consideration was irrelevant for deciding the amendment application.

8. Learned counsel for the petitioner further submits that in any event, the reliefs can be moulded by the court and in view of the now admitted dispossession of the plaintiffs, the relief of recovery of possession should have been permitted to be incorporated in the plaint.

9. Learned counsel appearing for the contesting defendants/opposite party nos. 1 to 5 places reliance on Article 113 of the Schedule to the Limitation Act and submits that in view of the relief not being couched as one for recovery of possession but being a decree of demolition and removal of structures on the suit property, the same is governed by Article 113 of the Limitation Act and is, as such, time-barred.

10. Moreover, since the evidence of the parties is already concluded, the learned Trial Judge was justified in refusing to permit the amendment.

11. Thirdly, learned counsel for the opposite party nos. 1 to 5 contends that in the year 2018, that is, three

years after the alleged cause of action for the amendment, the plaintiffs' witness asserted during deposition that the plaintiffs were till then in occupation of the suit property, thereby belying the amendment now sought to be incorporated, indicating that the construction of the structures took place in the year 2015.

12. Upon a careful consideration of the materials on record, I find that the order of the learned Trial Judge is justified in law and facts.

13. The relief sought to be incorporated by amendment is not couched in the form of recovery of possession, which might still have brought the relief sought to be introduced by the amendment within the ambit of Articles 64 and/or 65 of the Schedule to the Limitation Act. The form in which the relief is now sought to be introduced by amendment, being the demolition of allegedly illegal structures standing on the suit property which were installed about ten years prior to the filing of the amendment application, is palpably time-barred under the residuary provision of Article 113 of the Schedule to the Limitation Act, being not covered by the other Articles.

14. It is also evident that the plaintiffs, despite being fully aware for about ten years of the alleged construction of illegal structures by the defendants on the suit property, sat tight over the matter and allowed

the entire evidence in the suit to be concluded. Thus, there is no plausible explanation furnished for the prolonged delay in making the amendment application. Hence, the rigours of the proviso to Order VI Rule 17 of the Code of Civil Procedure (as amended) are attracted and the amendment sought by the plaintiff / petitioner could not have been allowed.

15. The conduct of the plaintiff/petitioner is also deplorable, since it is not clear from the amendment application as to what prevented him from taking out the amendment application throughout the period when the evidence took place over the last about ten years before filing the amendment application.

16. Moreover, the opposite party nos. 1 to 5 are justified in arguing that since the plaintiff, adducing evidence as his own witness, admitted in his deposition that he was still in possession of the suit property in the year 2018, the averment made in the amendment application that the plaintiff was dispossessed in the year 2015 is belied; also, such admission would run contrary to a prayer for recovery of possession for alleged dispossession in 2015.

17. In such view of the matter, as the learned Trial Judge took one of the plausible views on a preponderance of probabilities, there is no scope of interference with the impugned order.

18. Accordingly, CO 68 of 2025 is dismissed on contest without any order as to costs.

19. Interim order, if any, stands vacated.

(Sabyasachi Bhattacharyya, J.)