

JPD. 5.
July 24, 2025.
MNS.

CALCUTTA HIGH COURT
In The Circuit Bench at Jalpaiguri
Appellate Side

CO No. 118 of 2024

Gita Roy Sinha
Vs.
The Collector and the others

Mr. Tapash Bhattacharya,
Mr. Aviroop Bhattacharya,
Ms. Rinka Chakraborty

... for the petitioner.

Mr. Subir Kumar Saha, Ld. AGP.,
Mr. Hirak Barman

...for the State.

1. Heard learned counsel for the parties.
2. By the impugned order, two applications were decided.
3. By the latter portion of the order, an application under Section 151 of the Code of Civil Procedure (Code) filed by the principal defendant nos. 1 and 2 / opposite parties for adducing further evidence was allowed; whereas, by the earlier portion of the impugned order, an application for amendment of plaint filed by the present plaintiff / petitioner was dismissed.

4. The plaintiff/petitioner has challenged the earlier portion of the order whereby her amendment application was rejected.
5. Learned counsel appearing for the appellant submits that the learned trial Judge adopted a hyper-technical approach in dismissing the amendment application primarily on the premise that the same was filed at an advanced stage of the suit.
6. It is submitted that the amendments sought were innocuous.
7. Learned counsel appearing for the principal defendant nos. 1 and 2 / opposite parties contends that by the proposed amendment, the plaintiff seeks to change the entire character of the suit and to alter crucial averments made in the original plaint. Whereas the initial suit contained a relief of declaration, the same is now sought to be deleted. Furthermore, the description of the suit property is also attempted to be changed by altering the measurement thereof as given in the original plaint.
8. Upon a consideration of the amendment-in-question, this Court finds that there are several aspects to the amendment.

9. By the first portion of the proposed amendment, the relief of declaration of title, which was there in the original plaint, is sought to be deleted.
10. It is well-settled that the plaintiff can, at any point of time, relinquish a portion of its claim. Hence, such part of the proposed amendment does not make any major difference insofar as the defendants are concerned, since the deletion of the relief of declaration of title will be at the risk of the plaintiff herself.
11. Even without an amendment, the plaintiff could, at the time of hearing of the suit, have relinquished the claim of declaration of title.
12. As such, the said portion of the proposed amendment is innocuous and ought to have been allowed.
13. Insofar as the alteration of the measurement of the suit plots by virtue of the proposed amendment is concerned, it is found that the rudiments of the amendment are already there in the pleadings, since the *Khatian* numbers-in-question and some of the plot numbers have already been mentioned in the original plaint.
14. Thus, the change sought now in the measurement of the self-same plots cannot

make any noticeable difference in the character of the suit as such.

15. Thus, the amendment sought on such score is minor and technical in nature, being of a formal character, and the learned trial Judge adopted a hyper-technical approach in rejecting the same.

16. I also find from the impugned order itself that the evidence of the defendants is not yet complete and leave has been granted for further evidence to be adduced by the defendants.

17. In any event, the defendants will be at liberty to file an additional written statement to the amended plaint and lead further evidence, if necessary, on the pleadings sought to be incorporated by amendment.

18. Thus, this Court is of the opinion that the learned trial Court acted in the exercise of its jurisdiction illegally and with material irregularity in dismissing the amendment application of the plaintiff / petitioner.

19. Accordingly, CO No. 118 of 2024 is allowed on contest, thereby setting aside Order no. 57 dated May 17, 2024 passed by the learned Civil Judge (Senior Division) at Jalpaiguri in Title Suit No. 107 of 2015 and allowing the application of the

plaintiff / petitioner for amendment of her plaint in the said suit.

20. The amended plaint shall be filed within a fortnight from date in the trial court. The principal defendant nos. 1 and 2 / opposite parties will be at liberty to file additional written statement addressing the newly introduced pleadings in the amended plaint, which shall be filed within a fortnight after the filing of the amended plaint in the trial court.

21. It will be open to the learned trial Judge, if need be, to permit both the parties to lead additional evidence on the amended portions of the pleadings.

22. There will be no order as to cost.

(Sabyasachi Bhattacharyya, J.)