

S/L 12
06.11.2025
Court No.01
SK

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Civil Revisional Jurisdiction

C.O. 142 of 2025

Arati Biswas

Vs.

Smt. Nibedita Singh & Ors.

Ms. Suman Sehanabis (Mandal),
Ms. Anwesha Chakraborty
... for the Petitioner.

Fresh affidavit of service and notice to the learned advocate for the opposite parties in the Court below are filed, let those documents be kept with the record.

Despite repeated service, none appears on behalf of the opposite parties.

The instant application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for permanent injunction and is directed against the order dated March 01, 2025 passed by the learned Civil Judge (Junior Division), Mekhliganj, District – Cooch Behar, in the said suit being Title Suit No. 34 of 2013.

The learned Trial Judge by the order impugned has dismissed an application filed by the petitioner praying amendment of the plaint holding *inter alia* that the proposed amendment is based on a cause of action different from that of the suit.

Ms. Sehanabis (Mandal), learned advocate for the petitioner submits that the defendants in the written statement when sought to challenge the title of the plaintiff over the suit property, the plaintiff thought it expedient to seek a declaration of her title accordingly had filed the said application.

Having heard Ms. Sehanabis (Mandal) and on perusal of the records, it appears that on the challenge of the defendant to the title, the plaintiff has sought for the amendment to add a further prayer for a decree of declaration of her right, title interest over the suit property and a further negative declaration that the

defendants have no right over the suit property. The suit for perpetual injunction is based on a cause of action that the defendants are trying to trespass over the suit property which is an infringement to the right of ownership of the plaintiff. The cause of action of a decree of declaration accrues to the plaintiff on the denial and/or infringement to the plaintiff's title, therefore, it is not correct to say that by the proposed amendment, the plaintiff is seeking a relief based on a different cause of action than that of the suit.

The order impugned, for the aforesaid reason, is not sustainable and is accordingly set aside.

The application for amendment is allowed, The plaintiff is required to file an amended plaint within a period of two weeks from date, copy thereof be served upon the defendants enabling them to file additional written statement.

C.O. 142 of 2025 is thus disposed of with the above terms without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Biswajit Basu, J.)