

N.22S1
151/CL

CO 813 of 2025

Asfaruddin Ahmed Mallick
v.
Aftabuddin Ahmed Mallick & Ors.

17.06.26
DL-04
Ct-06
(S.R.)

Mr. Rabindranath Mahato
Mr. Aritra Shankar Ray ... for the petitioner.

Mr. Sukanta Das ... for the opposite parties.

1. This revisional application is directed against an order dated December 13, 2024 passed by the learned Civil Judge (Senior Division), 1st Court, Sadar, Paschim Medinipur in Title Suit No.160 of 2016 whereby the petitioner's application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of plaint has been rejected.
2. Title Suit No.160 of 2016 has been instituted by the petitioner praying, *inter alia*, for partition of the properties in the suit. In the said suit, the petitioner filed an application for amendment of plaint seeking to incorporate certain pleadings as well as the prayers seeking decree for declaration that certain deeds of gifts as well as sale deeds were illegal and void. It is the petitioner's case that the petitioner (plaintiff) got knowledge about the said deeds only from the written statement filed by the opposite parties/defendants.
3. Such prayer for amendment of plaint has been

rejected by the learned Trial Court on the ground that insertion thereof would change the nature and character of the suit. Feeling aggrieved by the said order the petitioner has approached this Court by way of the present revisional application.

4. Mr. Mahato, learned advocate appearing for the petitioner submits that the learned Trial Court has committed a serious error in rejecting the petitioner's prayer for amendment inasmuch as, the petitioner could not have challenged the aforesaid sale deeds without petitioner having knowledge thereof and the petitioner has specifically pleaded that he got knowledge about the said deeds only from the written statement filed by the opposite parties. It is further submitted that the nature and character of the suit would not be changed inasmuch as while deciding the shares of parties the Court can also decide the title of the co-sharers.
5. Mr. Das, learned advocate appearing for the opposite parties submits that the learned Trial Court has rightly passed the order impugned inasmuch as by incorporation of the said prayers, the nature and character of the suit would be changed.
6. Heard learned advocates appearing for the respective parties and considered the material on record.

7. It is not in dispute that trial has not yet commenced and the amendment to the plaint has been sought for prior to commencement of trial.
8. It is the petitioner's case that the petitioner got knowledge about the said deeds only from the written statement of the opposite parties and the amendment has been sought within three years from the date of knowledge of the plaintiff since the written statement was filed on March 9, 2017 (paragraph 1(b) of the amendment application at page 16 of the revision petition) and the application for amendment has been filed in the year 2019. In such view of the matter the proposed amendment cannot be said to be *ex-facie* time barred deserving rejection. The petitioner will ultimately have to prove his case of lack of knowledge or of acquiring knowledge, as the case may be.
9. As to whether the reliefs prayed for by the petitioner in respect of the said deeds would ultimately be barred by limitation or not is in the present case a mixed question of law and facts, which would be decided by the learned Trial Court after trial. At the stage of amendment, this question need not be gone into.
10. Further mere incorporation of challenge to two deeds and declaration thereof as void would, in the considered view of this Court, not change and

character of the suit. The basic structure of the suit will not be changed by the proposed amendment since the prayers for declaration of the deeds as void are only incidental to the main claim for partition and it is well settled that if question of title is incidental to the fundamental premise or the claim for partition, the same can be gone into.

11. The amendments sought for are necessary for proper adjudication of the matter and the same would prevent multiplicity of proceedings. Furthermore given the stage at which the same has been sought (i.e. pre-trial stage) there will be no prejudice to the opposite parties. In such view of the matter, the impugned order cannot be sustained.
12. For all the reasons aforesaid the order dated December 13, 2024 stands set aside. The application for amendment filed by the petitioner is therefore allowed. The petitioner shall file the amended plaint in terms of the schedule mentioned in the application for amendment within two weeks from date. The defendants/opposite parties shall be entitled to file additional written statement or amended written statement as the case may be in response to the amended plaint, within four weeks from the date of service a copy of the amended plaint.

13. With the aforesaid observations, CO 813 of 2025 stands disposed of. No costs.
14. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)