

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.O. 3759 of 2024

**Md. Faiyaz Ahmed
Vs.
Hyder Ali & Anr.**

For the Petitioner : Mr. Gopal Chandra Ghosh
Mr. Rajkrishna Mondal

For the Opposite Parties : Md. Nurezaman
Ms. Anima Chakraborty

Heard on : 09.12.2025

Judgment on : 28.01.2026

Dr. Ajoy Kumar Mukherjee, J.

1. Subject matter of challenge in the instant Application is the order dated 2nd August, 2024 passed by learned Judge, 10th Bench, City Civil Court Calcutta in TS no. 1765 of 2005, by which the plaintiff /opposite parties prayer for amendment of their written statements, filed against counter claim of the defendant/ petitioner has been allowed.

2. The bone of contention for preferring the instant application is that the plaintiff/opposite parties by way of amendment of their written

statement wants to withdraw the admission made by them in para 3 of the plaint that during joint possession Sk. Sakir executed a Heba and gifted his undivided 1/4th share in favour of his wife Saleman Bibi since deceased.

3. The case set out in the plaint is that One Megha Mistri was the owner of the structure of the three thika tenanted properties namely i) 14. Sayeed Saleh Lane (ii) 13/2 Patwar Bagan lane (iii) 2, Shaib Bagan Soorki Mill, also known as 2 Gas Street. Said Megha Mistry died leaving behind for sons namely (a) Abdul Gaffar, (b) Sk Sakir, (c) Sk Golam, (d) Sk. Munna and one daughter namely (e) Panchi Bibi. Aforesaid Golam was unmarried and predeceased his father. Therefore, three living sons and said married daughter jointly inherited the aforesaid structure of the properties on demise of Megha Mistri. It has been further stated in para 3 of the plaint that during joint possession of three structure of the said properties, Sk. Sakir executed a Heba in respect of his undivided 1/4th share in the aforesaid three structures to his wife Saliman Bibi. But the said Heba was not acted upon, as the properties were unpartitioned in between the brothers and sisters and therefore there was no delivery of possession of the gifted property in favour of donee by the alleged donor.

4. Thereafter aforesaid three brothers and sisters amicably partitioned their share in the property and thereby the eldest brother Abdul Gaffar abandoned his claim and the premises no. 14 of said Sayed Saleh Lane was allotted to Sk. Sakir and 13/2 Patwar Bagan Lane was allotted to Sk. Munna and premises no.2 Gas Street was allotted to Panchi Bibi.

5. Therefore by way of such amicable partition 13/2 Patwar Bagan Lane was possessed by Sk. Munna on payment of rent to the Zamindar, who

issued rent receipt and after the promulgation of Thika tenancy (Acquisition and Regulation Act) 1981, the zamindari system was abolished and the legal heirs of Munna namely Asgari Bibi and Golam Gilani became direct tenant and thereafter the plaintiff became tenant of the property.

6. On the other hand while Sk Sakir was residing at premises no.14 Sayed Saleh Lane, he died leaving behind his wife saliman Bibi and two daughters who are residing there but due to non-payment of ground rent, Saliman Bibi and her daughters were ousted from premises no.14 Sayed saleh lane by the then Zamindar and as she had no shelter, Sk Munna granted leave and license in respect of one room at his premises no.13 (renumbered as 13/2B) Patwar Bagan Lane to Saliman Bibi and her daughter and after their death her son Faiaz Ahmed, the defendant herein is residing in the said room as licensee. Said Faiaz Ahmed in order to avoid eviction filed a suit for declaration and partition of his share in the said Patwar Bagan Lane property being TS 60 of 1986 which was ultimately dismissed on contest on 30.07.1999 and no appeal was preferred.

7. The instant suit being T.S no. 1765 of 2005 was filed by plaintiff against the defendant for recovery of khas possession as the defendant has refused to vacate the said room occupied by him under leave and licence at premises no. 13/2B Patwar Bagan Lane. In the instant suit the defendant filed a counter claim inter alia with a prayer for declaring him as co-sharer of said property and thereafter the plaintiff filed written statement against the counter claim.

8. On perusal of the plaint filed by the plaintiff it appears that the plaintiff has clearly averred in the plaint that during such joint possession of

the properties mentioned in the plaint Sk Sakir executed a Heba and gifted his undivided 1/4th share in the aforesaid three premises to his wife. Saliman Bibi but the said Heba was not acted upon as there was no delivery of possession of the gifted property to the donee and the same was also not possible as the three brothers and one married sister were in joint possession of all the properties and there was no partition of the properties. However by way of amendment plaintiff wants to incorporate in proposed para 11(a) of their written statement against counter claim, denying and disputing earlier statement that during such possession and occupation in respect of aforesaid all properties, Sk Sakir had registered the deed of Heba on 01.08.1930.

9. From the aforesaid proposed amendment it appears that since plaintiff has categorically admitted in para 3 of the plaint that Sk. Sakhir executed Heba and gifted his undivided 1/4th share in the said three structures to his wife saliman Bibi, such portion of categorical admission cannot be allowed to be resiled from, though in the rest portion of the amendment, the plaintiff reiterated in the proposed amendment his existing case that said deed of heba was never acted upon as there was no delivery of possession in favour of the donee.

10. In view of aforesaid facts and circumstances of the case the proposed amendment of written statement filed by the plaintiff against defendants counter claim can be allowed except the following sentence quoted below:-

“It is also denied and disputed that during such possession and occupation in respect of aforesaid all the properties he registered the deed of heba i.e. deed of gift dated 01.08.1930 executed and registered in the office of Sub Registrar of Assurance, Calcutta and recorded in Book no.1, volume no. 53 pages 227 to 282, being no. 2817, for the year 1930.”

11. In view of aforesaid discussion the impugned order dated 02.08.2024 passed in T.S. No.1765 of 2005 is hereby modified to the extent that the plaintiffs written statements would be amended as per schedule of amendment of written statement to the counter claim except the above quoted portion marked in italic words. The plaintiff will file amended written statement within a period of three weeks from the date of communication of the order and the defendant will be at liberty to file rejoinder if any in respect of their counter claim within a period of three weeks thereafter.

12. C.O. 3759 of 2024 thus disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)