

CO. 4071 of 2025

08.06.26
M/L
Sl-13
Ct. 06
(Samar)

Shrimati Lakshmi Mahata & Ors.
V.
Asim Biswas & Ors.

Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray,
... for the petitioners.
Ms. Shohini Chakraborty,
Ms. Prajaanini Das,
....for the opposite party no. 1.

1. This revisional application is directed against an order dated March 10, 2025 passed by the learned Civil Judge (Junior Division), Jhargram in Title Suit No. 150 of 2024 whereby the petitioners' application for amendment of plaint has been rejected by the learned Trial Court.
2. The petitioners' have instituted Title Suit No. 150 of 2024 before the learned Civil Judge (Junior Division), Jhargram against the opposite parties herein praying *inter alia* for a decree of declaration of title and permanent injunction. The petitioners have claimed title in the suit property on the strength of a deed of conveyance executed on May 26, 2004 while asserting that they have acquired the same property from their vendor which their vendor had acquired by dint of a kobala dated April 29, 1950.
3. In the said suit, the opposite parties entered appearance and filed written statement along with counter claim praying for a decree of declaration of -

title of defendant nos. 1 and 2 in respect of B 1 schedule in the counter claim; title of defendant no. 3 in respect of B 2 schedule; title of defendant no. 4 in respect of B 3 schedule; title of defendant no. 5 in respect of B 4 schedule and title of defendant no. 6 in respect of B 5 schedule of the counter claim. A prayer for demarcation of the A schedule property of the counter claim has also been made.

4. Upon the written statement cum counter claim being filed, the petitioners discovered that the schedule of the property mentioned in the plaint was not in accordance with the schedule of the property mentioned in the parent deed (kobala) dated April 29, 1950.
5. Accordingly, the petitioners made an application for amendment of plaint asserting therein that although the kobala dated April 29, 1950 had been referred to in the recitals of the deed of conveyance dated May 26, 2004 (whereby the suit property had been conveyed in favour of the petitioners), the schedule of the property in the said deed of conveyance dated May 26, 2004 was incorrectly mentioned insofar as the western boundary of the property was concerned and the schedule of the plaint also carried the same mistake. The petitioners therefore prayed for leave to amend the plaint in terms of the schedule mentioned in the application for amendment.

6. Such application was contested by the opposite parties and ultimately, by an order dated March 10, 2025 the learned Trial Court was pleased to reject the petitioners' application for amendment observing that if such amendment was allowed, the counter claim filed by the opposite parties, "*which is based on the contentions regarding the present suit property*" would be rendered infructuous.
7. Feeling aggrieved by the aforesaid order dated March 10, 2025 the petitioners have approached this Court by filing the present revisional application.
8. Mr. Mahato, learned advocate appearing for the petitioners submits that the learned Trial Court has fallen in error in rejecting the petitioners' application for amendment.
9. He has taken the Court through the kobala dated April 29, 1950 to demonstrate that the grantee mentioned therein i.e. Jogesh Chandra Basu is the petitioners' vendor. He has also indicated that the measurement (area) of the property that has been mentioned in the deed dated April 29, 1950 clearly matches with that mentioned in the deed dated May 26, 2004 (whereby the said property was conveyed to the petitioners by their vendor). He then placed the conveyance deed dated May 26, 2004 to demonstrate that the recitals thereof clearly referred to the mother deed i.e. the kobala dated April 29, 1950.

10. Mr. Mahato, further submits that since the same property which formed the subject matter of the kobala dated April 29, 1950 has been transferred to the petitioners by the deed of conveyance dated May 26, 2004 therefore, there could not have been any impediment in allowing the petitioners to amend the plaint so as to reflect the correct schedule of the property in terms of the parent deed dated April 29, 1950.
11. Mr. Mahato, has also placed the counter claim filed by the opposite parties to show that the counter claim relates to properties other than the suit property and that being so the proposed amendment would not prejudice the opposite parties at all.
12. Relying on a judgment of the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another*** reported at ***(2022) 16 SCC 1***, it is submitted that all amendments which are necessary for determining the real question in controversy should be allowed, provided the same do not cause injustice or prejudice to the other side and that any amendment may justifiably be allowed if the same is intended to rectify the absence of material particulars in the plaint.
13. Mr. Mahato further submits that the dispute between the parties can be resolved only by proper

survey work and local investigation. In support of such submission, he relies on a judgment of Hon'ble Division Bench of this Court in ***Mayarani Dutta Vs. Ranjit Kumar Nandi*** reported at **2022 SCC OnLine Cal 2312**.

14. Ms. Chakrabarty, learned advocate appearing for the opposite parties vehemently contended that the learned Trial Court has committed no error in passing the order impugned. It is submitted that the case run by the petitioners' in the plaint, specially in paragraph 5 thereof, would indicate that the plaintiffs have been in possession of a property "*with specific boundary by virtue of kobala dated 26.05.2004*". It is submitted that since it is the petitioners' own case that the petitioners' have been in possession of the property having the boundaries as specified in deed of conveyance dated May 26, 2004, therefore the petitioners cannot be permitted to amend the plaint and take a different stand now, after the opposite parties have put in their written statement and counter claim.

15. She further submits that in any case, if the petitioners seek to amend the plaint, the petitioners must first get the instrument (on the basis of which they claim title), rectified and it is only then that they would be entitled to pray for the proposed amendment.

16. Ms. Chakrabarty, next cites an order dated

January 10, 2025 passed by the learned Trial Court in the said suit whereby an *ad interim* injunction that had been initially granted in favour of the petitioners' was vacated as the petitioners' had failed to establish their case of injunction. It is submitted that in case, the petitioners are now allowed to amend the plaint, the petitioners might use such amendment to resurrect the same interlocutory remedy that was declined by the order dated January 10, 2025.

17. She next invites the attention of this Court to the schedule of application for amendment filed by the petitioners and submits that paragraph 13 of the said schedule and the boundaries of the property in suit as mentioned in the said schedule of amendment are not in consonance with the schedule of the kobala dated April 29, 1950, which is being cited as the sheet anchor for the petitioners' case.

18. Heard learned advocates appearing for the respective parties and considered the material on record.

19. A meaningful and wholesome reading of the plaint would show that the petitioners have founded their case not only on the conveyance deed dated May 26, 2004 but also on the parent deed (kobala) dated April 29, 1950.

20. While a severed or selective reading of

paragraph 5 of the plaint may at the first blush suggest that it is the petitioners' case that they are in possession of the property sold to them with specific boundaries by virtue of the kobala dated May 26, 2004, a cumulative reading of paragraphs 3, 4 and 5 of the plaint would indicate that the petitioners are in possession of the same property that was transferred in favour of their vendor by virtue of the kobala dated April 29, 1950 which was specified by the boundaries mentioned in the kobala dated April 29, 1950 itself.

21. In such view of the matter, it cannot be said at this stage that there is no foundation for the petitioners' prayer for amendment specially at a time when the suit has not yet matured for trial and is still at this stage of pleadings. In fact, it is apparent from the order impugned that the next date had been fixed for filing of written statement to the counter claim.

22. The judgment of the Hon'ble Supreme Court in ***Life Insurance Corporation of India*** (*supra*) has taken note of several earlier authorities on the aspect of amendment of pleadings and has reiterated the law on the point by holding *inter alia* that all amendments which are necessary for determining the real question of controversy should be allowed provided the same do not cause injustice or prejudice to other side.

23. In the present case, since the parties are still at the stage of pleadings and the amendment is such that it cannot be said to be absolutely off the record, specially in view of the fact that the property covered by the mother deed/parent deed (kobala) dated April 29, 1950 was transferred in entirety in favour of the petitioners' by the deed of conveyance dated May 26, 2004, such amendment cannot be held to be impermissible. The opposite parties will have full opportunity to contest the petitioners' claim by way of either amending their written statement or filing an additional written statement. The amendment is clearly necessary for determining the real question of controversy.

24. There is however substance in the contention of Ms. Chakrabarty that the amendments as prayed for by the petitioners' are not strictly in consonance with the schedule of the property covered by the kobala dated April 29, 1950 which is the petitioners' sheet anchor for amendment. In such view of the matter, while this Court is inclined to allow the amendment application filed by the petitioners subject to payment of costs, such amendment would be restricted only to the extent of permitting incorporation of paragraphs 11 and 12 of the schedule of the amendment (appearing at page 56 of the revision petition) and paragraph 2 (appearing at page 57 of the revisional application)

only to the extent the same mentions the boundary for the western side of the property in absolute consonance with kobala dated April 29, 1950 and not the other boundaries.

25. Insofar as the opposite parties' apprehension that the petitioner might use the amendment to get the order dated January 10, 2025 (whereby the petitioners' application for temporary injunction was rejected) varied or modified is concerned, this Court clarifies that this amendment would not entitle the petitioners to seek variation or modification of the order dated January 10, 2025 inasmuch as it cannot be the case of the petitioners that what has actually been in their possession from the time of institution of the plaint has or could be changed only by virtue of the present amendment.

26. It is further clarified that this amendment shall not be treated as a rectification of the deed dated May 26, 2004 and the same shall not create any equity in favour of the petitioners for purpose of claiming such rectification. The petitioners will in any case have to prove their own case. It will be open for the petitioners to take proper steps available in law, in case, the petitioners wish to get a rectification done in accordance with law.

27. Accordingly the order dated March 10, 2025 stands set aside and the application for amendment

filed by the petitioners is allowed to the limited extent as indicated above. The petitioners shall file the amended plaint before the learned Trial Court within a period of three weeks from date. The opposite parties shall be entitled to either file an additional written statement or amended written statement to traverse the pleadings incorporated in the plaint by way of amendment as indicated above, within three weeks from the date of service of the amended plaint.

28. The petitioners shall pay costs assessed at Rs. 5000/- (Rupees Five Thousand only) to the defendants/opposite parties. It has been submitted by Ms. Chakrabarty, the learned advocate appearing for the opposite party no. 1 that the petitioners or their learned Advocate on record before this Court shall be informed of the name and bank account details of the defendant/opposite party in whose favour costs would be paid, within two days from date. The petitioners' shall pay such costs in such bank account as would be provided to the petitioners' learned Advocate prior to the filing of the amended plaint within the time mentioned hereinabove.

29. With the above observations, CO. 4071 of 2025 stands disposed of.

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

(Om Narayan Rai, J.)