

27.01.2026
Ct. No. 30
SL No. **24.**
MKP

CO 4237 of 2024

Tapan Raha
Vs.
Astick Chakraborty and Anr.

Mr. Tarak Nath Halder

.....for the Petitioner

Name not supplied

.....for the Respondent

- 1.** Affidavit-of-service filed be kept with the record.
- 2.** It appears that service could not be affected and the same has been returned with the endorsement "N&P".
- 3.** The Civil Revision is taken up for hearing.
- 4.** The revision has been preferred challenging an order dated October 1, 2024 passed by the Learned Civil Judge (Junior Division) Additional Court at Sealdah, District-South 24 Parganas in Ejectment Suit No.271 of 2005.
- 5.** Vide the impugned order the Trial Court has rejected the application under Order 6 Rule 17 on the ground that though the amendment

was formal in nature, the same being made at a belated stage, that is at the stage of trial, the amendment could not be permitted.

6. It appears that admittedly the plaintiff/petitioner has prayed for amendment at the stage when trial had commenced though the amendment prayed for was within the knowledge of the petitioner before the Trial commenced.

7. It is submitted that it is due to inadvertence that he could not prefer the said application at the relevant time.

8. The petitioner relies upon the judgment of the Supreme Court in ***H.K.Sema And Dr. AR.Lakshmanan, JJ., Rajesh Kumar Aggarwal & Ors. Vs. K.K.Modi & Ors.*** in ***AIR 2006 SC 1647*** in support of his case.

9. In the said judgment the Supreme Court has held as follows:

“The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

O. 6 R. 17 consisting of two parts

whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. The real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused.”

- 10.** In the present case, the amendment prayed for is as follows:

“Schedule of Amendment

After para 1 a new paragraph 1A is required to be incorporated as under.

1A)"That Renuka Raha during her lifetime had executed a registered deed of gift registered in Book- 1, CD. Volume no. 64, Pages 6037 to 6050, being no. 02696 for the year 2008 in the office of A.R.A- 1, Kolkata, whereby she had

*transferred the entire suit property
in favour of the present plaintiff".*

11. It appears that the amendment prayed for is necessary for proper adjudication of the suit as the suit is dependent on the said amendment. The said amendment as prayed for, will also not change the nature and character of the suit and will also not prejudice the defendants in any manner, what so ever, who shall be permitted to file their additional written statement, if any.

12. Accordingly, the application under Order 6 Rule 17 CPC is hereby allowed, on the impugned order dated October 1, 2024, passed by the Learned Civil Judge (Junior Division) Additional Court at Sealdah, District-South 24 Parganas, **being set aside.**

13. Petitioner is permitted to file his amendment plaint within 15 days from the date of this order and additional written statement if any, may be filed within 30 days thereafter.

14. The Trial Court shall then proceed with the suit expeditiously.

15. C.O.4237 of 2024 is disposed of.

16. Applications, if any, connected thereto stands disposed consequently.

17. Interim order, if any, stands vacated.

- 18.** Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[Shampa Dutt (Paul). J]