

TS 200/11 (R-200/11)

Order Dated 27-02-2018

Today is fixed for hearing of the petition filed by the plaintiff U/O 6 R-17 of CPC.

The record is taken up for hearing and passing order.

Plaintiff and defendant nos. 1 and 4 have taken steps and defendant no. 2 has filed written objection today. Copy is served.

The instant petition has prayed for passing an order for amending the plaint as per Schedule mentioned in the petition on the ground that the plaintiff has acquired absolute ownership in respect of 2 storied building being situated on the western portion of the suit premises by way of ouster. Due to bonafide omission a separate Schedule has not been incorporated in the plaint in respect of the property over which the plaintiff has acquired title. Some amendments are required due to typographical error and those are required to be rectified.

Written objection is filed on behalf of defendant nos 1 and 4 praying for rejection of the petition on the ground that Rebati Mohan Chakraborty died leaving 4 sons and 1 daughter and they became joint owners. The plaintiff is self centered and a greedy person knowing that all have equal share in spite of that the plaintiff has filed this instant petition with an intention to grab the suit unnecessarily. The plaintiff never alone constructed a small 2 storied building at his own cost on the western part of the suit property.

Written objection is also filed today on behalf of the defendant no 2 has also prayed for rejection of the petition for amendment filed by the plaintiff on the ground the instant petition is misconceived, motivated and harassing one. In earlier occasion the plaintiff sought for amendment and was allowed and again the plaintiff has filed this petition and are filing repeatedly such type of petition one after another.

Ld. advocate for the plaintiff submits that the instant petition has sought for amendment and if the said amendment is allowed that will not change the nature and character of the suit property. Due to mistakes, some errors are found in the plaint which are required to be rectified and there is a need of insertion something in respect of the schedule of the property. The instant petition has sufficient merit to be allowed.

Ld. advocate on behalf of the defendant nos 1 and 4 raised objection by submitting that the plaintiff has to prove that the said construction was made at his own expenditure.

None is present on behalf of the defendant no. 2 although written objection is filed today.

Hd. Ld. Advocates of both sides. Perused the petition and the written objection and the plaint, it appears that if the instant amendment is allowed, that will not change the nature of the character of the suit property as the instant suit relates to partition.

Hence, it is **ordered**

that the instant petition for amendment filed by the plaintiff is considered and allowed.

To **12-03-2018** for filing amended plaint.

D/C by me

CJSD, 5th Court, Alipore

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