

**Office of Civil Judge (Junior Division),
Lalbagh, Murshidabad
Title Suit-193 of 2020**

Present before : Priyanka Shaw (J.O. Code WB1283)
Civil Judge, (Junior Division),
Lalbagh, Murshidabad

Order No 20 dated 18.11.2024

Today is fixed for hearing of the petitions under section 153, C.P.C & Under Order 6 Rule 17 CPC along with petition under Order I, Rule 10 (2) of CPC.

Defendant no. 1 and 2 are present through their respective advocates.

Plaintiff files a petition praying for extension of ad-interim order which is filed on affidavit.

Heard. The prayer is allowed and the ad-interim order is extended till next date.

Now the record is taken up for hearing of the petition under Under Order 6 Rule 17 CPC dated 16. 12.2023.

Learned Advocate for the plaintiff submitted that defendant no. 2 has been added as party to this suit and subsequent to his petition the plaintiff for the first time gained the knowledge as to the transfers upon which the defendant claimed their title. The plaintiff thus has prayed for amendment and as such, Learned Advocate prayed for allowing the instant application as the same is formal in nature.

The Learned Advocate for the Defendant did raised vehement objection as new facts are being incorporated in the suit and it change the cause title of the suit.

Heard the Learned Advocate for both sides.

Considered.

Perused the instant petition, the written objection dated 06.04.2024 and the other materials on record.

Amendment has been provided under Order VI Rule 17 of C.P.C.

Order VI Rule 17 of C.P.C. Provides that :-

“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial”.

From above it became clear that for granting amendment two condition must be satisfied:-

1. The amendment is necessary for determining real question in controversy between the parties.
2. The amendment sought must not change the nature and character of the suit.
3. If the amendment sought after trial, then plaintiff needs to prove that the matter was not within their knowledge or in spite of due diligence, the party could not have raised the matter before the commencement of trial.

Our Hon'ble Court In Trideb Majumdar Vs Smt. Joyeeta Majumder, reported in **2016 (1) ICC 719 (Cal)**, where Hon'ble **Justice Ishan Chandra Das** has been pleased to observed that :-

*“This court in the case of **Ajay Kumar Paul & Anr. Vs. Sushil Kumar Sah & Ors.**, reported in **2013(1) CLJ (Cal) 10** held that the court can allow the amendment of the plaint for shortening the litigation and there is judicial recognition to take more liberal approach and pragmatic view under the amendment of 2002. In another decision of this Court in the case of **Sasanka Sekhar Bhowmic & Ors. vs. Meghnath Tanti & Ors.**, reported in **2012(1) CLJ (Cal) 322** wherein similar view was expressed by this Court relying on a decision of the **Hon'ble Apex Court Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors.**, reported in **2006 (6) SCC 498** where the Hon'ble Apex Court was categorical in holding in the following terms, quoted herein :*

“the Court should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bonfide one”.

Identical approach was expressed by another single Bench of this Court in an unreported decision in C.O.1846 of 2014.

In the instant suit it seems that the plaintiff intends to amend the plaint in regards to an event which came within the knowledge after defendant no. 2 appeared in this suit . The entire fact of the transfer of the suit property was never within the knowledge of the plaintiff. This Court is further of the opinion that the plaintiff had initially filed this suit for declaration of title, eviction of the defendant and for recovery of khas possession. By filing the instant amendment, they intend to further pray for declaration of the impugned deed as void. Thus, this court finds there is no substantial change in the nature and character of the suit property. The proposed amendment is necessary for the sake of proper adjudication of real dispute and for substantial justice there is no impediment to allow the petition. This Court finds that the amendments preferred by the plaintiffs are very much relevant. It is also observed that the trial in the instant suit has not yet commenced and if the amendment be allowed there would be no injustice to the defendants as they have ample opportunity to file additional W/S. In the light of the above I think the petition should be allowed for the ends of justice.

Hence, it is,

Ordered

that the instant application so filed under Order 6 Rule 17 CPC dated 16.12.2023 be and the same is hereby considered and allowed on contest without any cost.

In the light of the above discussion, the petition so filed by the plaintiff u/s 153 of CPC for amending the injunction petition stands allowed on contest without any order as to costs. The plaintiff is directed to file amended plaint as well as petition within 14 days from the date of this order.

Now the record is taken up for hearing of the petition dated 16.12.2023 under Order I, Rule 10 (2) of CPC.

Defendant did not file any written objection against the petition.

The learned Advocate for the Plaintiff submits that they had filed a petition dated 16.12.2023 Under Order 1 Rule 10 (2) of C.P.C and submits that during the pendency of this suit, defendant no. 2 had

been added as party and through his petition he gained the knowledge that there are other necessary parties to this suit and by filing this petition he intends to add him as defendants in this suit.

The Learned Advocate for the defendants raised vehement objection and stated that the said facts were within the knowledge of the plaintiff since the institution of the suit.

Heard both sides.

Perused the petition and other materials available on record.

Considered.

The Ld. Advocate on behalf of the plaintiff has prayed for impleading the scheduled named person as defendants in the instant suit as it has been alleged that the suit property has been transferred to them. The plaintiff has averred that the aforesaid necessary party need to be impleaded for effective adjudication of the suit.

The court is of the opinion that the scheduled named person need to be impleaded for effective adjudication of the suit.

Hence, it is,

ORDERED

that the petition under Order I Rule 10(2) of C.P.C. dated 16.12.2023 is heard and considered and allowed on contest without any order as to costs.

Let the schedule named person be impleaded and added as defendants.

Plaintiff is directed to file an amended copy of the plaint within 14 days from the date of this order and to take steps against the added defendants.

B.C- I is directed to issue the same once filed.

Fix 24/02/2025 for filing additional W/S, if any by the defendant and for SR and AD

D/C by me,

Sd-/ Priyanka Shaw
Civil Judge (Junior Division)
Lalbagh,
Murshidabad

Sd-/ Priyanka Shaw
Civil Judge (Junior Division)
Lalbagh,
Murshidabad