

**In the Court of the Ld. Addl. District Judge, FTC 3<sup>rd</sup> Court,  
Basirhat.**

**T.A. No. 14 of 2011**

Present:-

Sri Sanjay Naskar(**WB01025**)

Addl. District Judge, F.T.C.3rd Court, Basirhat.

**Order no. 94, dt. 05/09/2024**

Both the contesting parties are present through their Ld. Advocates. As fixed, the record is taken up for further hearing of the petition dated, 05.01.2024 filed by the respondents under Order 6 Rule 17 CPC for amendment of the written statement.

Ld. Advocate for the respondents submitted that the entry in the R.S. Record of Rights being no. 1316 is wrong, baseless and accordingly, the respondents had filed an application being O.A. No. 668 of 2006 before the Ld. W.B.L.R.T.T. which was allowed on 10.03.2006 and in pursuant to the said order of the Ld. W.B.L.R.T.T., one misc-proceeding being no. 06 of 2006 was started before the B.L. & L.R.O. Basirhat-I which was allowed by drawing various order from 26.06.2006 to 22.01.2007.

Ld. Advocate for the respondents further submitted that the contesting respondent is innocent about law and is a poor person and is not having much knowledge about the subsequent facts came up in the said proceedings resulting which the said subsequent facts, regarding the proceedings before the Ld.W.B.L.R.T.T. and B.L. & L.R.O., Basirhat-I, and the fate of the said proceedings could not be brought in the unamended written statement before the Ld.Trial Court. During appeal hearing it was detected and so the said subsequent facts should be incorporated in the unamended written statement to determine the real controversy between the parties and for complete adjudication of the suit. If it is not allowed, multiplicity

of the suit will be cropped up. He also relied on **2006 (4) SCC 385, Rajesh Kumar Agarwal vs K.M. Modi** wherein it has been held that “it is mandatory on the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. Court should not go into the correctness or falsity of the case in the amendment. It should not record a finding on the merit of the amendment and the merit of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. Rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.”

The Ld. Advocate for the respondents also relied on **2004(1) W.B.L.R. 832 Amerendua Prasad Roy Chowdhury vs Prithwish Ghosal** wherein it has been held that “the real spirit of law behind the provision is that the amendment deemed necessary in the context of factual score of particular case, must be allowed in order to avoid multiplicity of the suit. Generally speaking all amendments ought to be made for the purpose of determining the real question in controversy between the parties to any proceeding or of correcting defect or error in any proceedings. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even in fraction of the rules and procedures. Rules of procedure are intended to be a handmaid to the administration of justice.”

The Ld. Advocate for the respondents next cited the case law reported in **2000(1)SCC 712 B.K.N. Pillai vs P. Pillai** wherein it has been held that power to allow amendment is wide and can be exercised at any stage of proceeding in the interest of

justice. Amendment cannot be claimed as a matter of right. Court should however not adopt hyper-technical approach while dealing with prayer for amendment. Amendments are allowed in pleadings to avoid uncalled for multiplicity of litigation. Principles applicable to amendment of plaint are equally applicable to amendments of written statements. Proposed amendment should not cause such prejudice to other side which cannot be compensated by cost. No amendment should be allowed which amounts to defeating a legal right accruing to opposite party. Delay in filing petition for amendment of pleadings should be properly compensated by costs.”

So, the Ld. Advocate for the respondents prays for allowing the instant petition for amendment of written statement.

The Ld. Advocate for the appellant vehemently raised objection and relying on the judgement of Hon’ble High Court reported in **2005(2)CHN 667, Gulshion Bibi vs Hasmat Ali** submitted that the defendant can be allowed to amend his written statement to raise an additional ground but if the trial of the suit has to be reopened afresh as a result of such amendment, it should not be allowed. Normally no amendment should be allowed in appeal which raise fresh factual questions.” So, he prays for rejection of the instant petition.

Having heard both sides and on perusal of the record, it appears that the amendment has been sought for in appeal where the appellant has already advanced his part of argument. Admittedly there is no cross appeal or cross objection raising the particular defence to meet the ground of appeal. The respondent simply supported the impugned judgement and decree. So, there is no question of entertaining any fresh question of fact and law which was not asserted before the Ld. Trial Court.

The proceedings before the Ld. W.B.L.R.T.T. has been disposed of on 10.03.2006 and proceedings before the B.L. & L.R.O. Basirhat has been disposed of on 22.01.2007. The impugned judgement and decree was recorded on 20.12.2010. So, the respondent could have brought the proposed amendment before the Ld. Trial Court before pronouncing the impugned judgement. To overcome the situation the respondent made out a case that he was illiterate, poor, not having much knowledge about the subsequent facts of the said two proceedings and so, it could not be brought before the Ld. Trial Court. The aforesaid grounds are not conducive to his due diligence.

The proposed amendment has been sought for as an additional ground to show that the entry in the R.S. Record of Rights is wrong, erroneous, baseless and it was held in the said two proceedings that the entry in the R.S. Record of Rights is wrong, erroneous, baseless. The findings of the said two proceedings being of quasi-judicial proceedings are not binding upon the Civil Court who has been asked to investigate the title of the parties to the suit. It is the case of the defendants that their predecessors in interest Ichu Gazi purchased the suit property and thereafter, the defendants being successors and subsequent successors inherited the same. If that be so, their shares could be detected from the said title deeds of their predecessors in interest. Record of Rights does not create or extinguish title and therefore, subsequent correction in the Record of Rights as claimed by the respondents would have no effect in the shares recorded in their title deeds. The nature of the suit plot is 'Hat' and so, they have rent receiving interest from the hawkers and therefore, they would have no any specific possession in respect of any particular portion of the suit plot

and so subsequent correction in the record of rights is not essential to determine the real controversy.

If the proposed amendment is allowed it would have effect of reopening of trial because the appellant is to give further evidence to meet the proposed amended facts.

In view of the above discussion the instant application is liable to be rejected.

The case law cited by the respondent are on the general principle of law and not dealing with amendment in appeal and so, renders no support to the respondent. On the other hand the case law reported in **2005(2)CHN 667** having dealt with amendment in appeal is applicable in this case.

Hence, it is

**o r d e r e d**

that the petition dated, 05.01.2024 filed by the respondent under Order 6 Rule 17 CPC for amendment of the written statement is considered and rejected on contest with cost of Rs.1,000/- to be paid to the appellant. Thus, this petition is disposed of.

To 12.09.2024 for hearing of appeal from the side of the respondent.

Dictated & Corrected by me.

Addl. District Judge,  
Fast Track 3<sup>rd</sup> Court, Basirhat.

**Sanjay Naskar.**  
**J.O.Code WB01025**  
Addl. District Judge,  
Fast Track 3<sup>rd</sup> Court, Basirhat.