

12.06.2026
Ct. No.6
Sl. No.7
skg

C.O. 82 of 2026

**Jhuma Bhattacharyya
Vs.
Abhijit Bhattacharya & Anr.**

Mr. Chiranjib Sinha, Adv.
Mr. Satyam Mukherjee, Adv.

...for the petitioner

Mr. Arkadyuti Pahari, Adv.
Ms. Gargi Maity, Adv.
Mr. Alik Mandi, Adv.

...for the opposite parties

1. This revisional application is directed against an order dated December 10, 2025 passed by the learned Civil Judge (Sr. Div.) 5th Court at Alipore, South 24 Parganas in Title Suit no. 1358 of 2018 whereby the petitioner's application for amendment under Order 6 Rule 17 of the Code of Civil Procedure, 1908 has been rejected.
2. Title Suit no. 1358 of 2018 has been instituted by the opposite party no.1 against the petitioner and the opposite party no.2 for partition of the properties mentioned in the schedule of the plaint. The suit has matured to the stage of evidence and defence witness is to be examined.
3. After commencement of trial i.e. at this stage of evidence the petitioner filed an application for amendment of written statement seeking to introduce a counter claim as regards her share in respect of premises no. 11 and

11A Ruby Park on the basis that, one Ashalata Devi (who died in 1983) had executed a Will on August 21, 1979 thereby bequeathing the aforesaid property to her eldest son Amiya Kumar Bhattacharyya who died on April 18, 2000 and that upon the death of said Amiya Kumar Bhattacharyya, the parties to the suit had inherited the said property.

4. Such application for amendment has been rejected by the learned trial Court by observing that the same has been filed after commencement of trial without satisfying the due diligence test by the petitioner. Feeling aggrieved thereby the petitioner has approached this Court to file this revisional application.
5. Learned Advocate appearing for the petitioner submits that the learned Trial Court has committed a serious error in rejecting the petitioner's prayer for amendment on the sole ground that the amendment was sought to be done subsequent to commencement of trial. It is submitted by the petitioner that in a partition suit, the petitioner could not have been prevented from putting forward her claim by way of a counter-claim by amending the written statement, even if, the period of limitation had expired.
6. In support of his contention he relies on a judgment of a co-ordinate Bench of this Court in ***Manasa Pallab & Ors. v. Jagabandhu Aru & Ors.*** reported in **2025 SCC**

OnLine Cal 4268. He also relies on a judgment of the Hon'ble Supreme Court in the case of ***Dinesh Goyal @ Pappu v. Suman Agarwal (Bindal) & Ors.*** reported at **2024 SCC OnLine SC 2615.**

7. The learned Advocate appearing for the opposite party submits that the learned Trial Court has rightly passed the impugned order and the same does not call for any interference.
8. He submits that the property in respect whereof counter-claim has been sought to be made by the petitioner has been clearly mentioned in the plaint and that a separate suit for partition is already pending where the petitioner as well as the opposite parties along with others have been arrayed parties.
9. In support of his contention that the order impugned has been rightly passed and the petitioner's prayer for amendment has been rightly refused, he relies on a judgment of the Hon'ble Supreme Court in the case of ***Ashok Kumar Kalra v. Wing CDR. Surendra Agnihotri & Ors.*** reported in **(2020) 2 SCC 394.**
10. Heard the learned Advocate appearing for the respective parties and considered the material on record.
11. It is not in dispute that the Title Suit no. 153 of 2015 has been instituted by the certain other persons seeking partition of the same premises i.e. the premises no. 11 and 11A Ruby Park before the learned Civil Judge (Sr.

Div.) 5th Court at Alipore and the parties to Title Suit no. 1358 of 2018 have also been arrayed as defendants in the said suit.

12. In such view of the matter when the said suit would be adjudicated, the right, title and interest of the parties in the said suit as regards the property in suit would be adjudicated and if the petitioner is entitled to any share in the property, the same would be determined by the learned Trial Court in the said suit. In such circumstances this Court is of the view that there was no necessity for the petitioner to apply for amendment of the written statement and pray for counter claim in the subsequent suit being Title Suit No. 1358 of 2018.
13. Furthermore, there is substance in the observation made by the learned Trial Court that the petitioner has not shown due diligence in approaching the learned Trial Court by way of the application for amendment after commencement of trial as the factual foundation for amendment was well within the petitioner's knowledge.
14. For all the reasons aforesaid the order impugned dated December 10, 2025 insofar as the same rejects the petitioner's prayer for amendment does not call for any interference.
15. The judgments of the Hon'ble Supreme Court in the case of **Dinesh Goyal** (supra) and **Manasa Pallab** (supra) cannot come to the aid of the petitioner in the case at

hand since in this case, the petitioner's claim for partition would any case stand answered in the other suit i.e. Title Suit No. 153 of 2015 which is prior in point of time and which is pending before the same learned Court.

16. It is clarified that this order of rejection of amendment would not preclude the petitioner's claim in the said Title Suit No. 153 of 2015, since the petitioner is a party defendant in the said suit.

17. Since both the suits i.e. Title Suit No. 153 of 2015 and Title Suit no. 1358 of 2018 are pending before the same learned Court i.e. learned Civil Judge (Sr. Div.) 5th Court at Alipore therefore the learned Court may consider hearing out the two suits analogously and/or simultaneously according to its convenience.

18. With the aforesaid observations C.O. 82 of 2026 stands disposed of. There shall be no order as to costs.

19. 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.)