

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

IA No: GA 4 of 2023

In CS 219 of 2012

Thakurani Shree Shree Durga Mata Jew, & Ors.

Versus

Kangali Charan Raul & Anr.

Mr. Debdatta Sen

Mr. Siddhartha Chatterjee

Mrs. Suchismita Ghosh Chatterjee

Mr. Ledia Dasgupta

Mr. Malay Kr. Seal

... For the plaintiffs.

Mr. S.N. Arefin

Mr. Partha Chakraborty

Mr. M. Obaid

... For the defendant nos. 1 and 2.

Hearing Concluded On : 14.08.2023

Judgment on : 22.08.2023

Krishna Rao, J.:

1. The plaintiffs have filed the present application being G.A No. 4 of 2023 praying for amendment in the cause title, body and schedule of the plaint as mentioned in the proposed amendment annexed with the application.
2. The plaintiffs submitted that the plaintiff no.4 died on 20.11.2022 leaving behind his wife Bharati Mitra and thus the name of the original plaintiff no. 4 is to be deleted and the name of the wife of the plaintiff no. 4 is to be added. The plaintiff no. 4 was also the power of attorney holder of the plaintiff no.5 and now one Amrita Mitra is the power of attorney holder of the plaintiff no. 5 and in the cause title after the description of the plaintiff no. 5, the name of the Argha Mitra is to be deleted and the name of Amrita Mitra is to added as power of attorney holder of the plaintiff no. 5 in terms of power of attorney dated 30.10.2020.
3. The plaintiffs further submitted that name of Amrita Mitra and Amitabh Mitra are to be added as plaintiff nos. 8 and 9. The plaintiffs submit that in paragraphs 1 and 4 and in Schedule-A property is also required to be amended by incorporating the details of the suit premises.
4. It is further submitted that in paragraph 8 and prayer(a) of the plaint is to be amended by deleting the word “possession”and by incorporating the sentence “eviction/ejectment as against the defendant”.

- 5.** Mr. Debdatta Sen, learned Advocate representing the plaintiffs submits that the amendments as sought for by the plaintiffs are formal in nature and will not change the nature and character of the suit. He submits that the amendment is very much necessary for proper adjudication of the suit and if the amendment as sought for by the plaintiffs is not allowed, the plaintiffs will suffer irreparable loss and injury.
- 6.** Mr. Sen in support of his claim relied upon the following judgments :
- i. (2002) 7 SCC 559 (Sampath Kumar -vs- Ayyakannu and Another).*
 - ii. AIR 2009 SC 1433 (Vidyabai and Others -vs- Padmalatha and Anr.).*
 - iii. (1978) 2 SCC 91 (M/s Ganesh Trading Co. -vs – Moji Ram).*
 - iv. (2006) 4 SCC 385 (Rajesh Kumar Aggarwal and Others -vs- K.K. Modi & Others).*
- 7.** The defendant contended that the application filed by the plaintiffs is not maintainable under law as the plaintiffs cannot substitute the legal heir of the plaintiff no. 4 by way of amendment and also cannot add plaintiffs no. 8 and 9 by way of amendment. The defendant submits that there is a specific provision in the Code of Civil Procedure for substitution of legal heirs and addition of plaintiffs and the same cannot be allowed by way of amendment.
- 8.** The defendants submits that the amendment sought by the plaintiffs will change the nature and character of the suit as the plaintiffs have

initially prayed for only possession and now the plaintiffs intent to delete the word possession and to add the word eviction and ejection in the prayer portion and in paragraph 8 of the plaint.

9. The defendants submits that descriptions of the proposed plaintiffs no. 8 and 9 has not been given in the application but in the proposed amended plaint, the plaintiffs have added the name of the plaintiffs nos. 8 and 9. The defendants submit that the plaintiffs have described Amrita Mitra as power of attorney holder of the plaintiff no. 5 but no Power of Attorney is enclosed with the application.
10. The defendant further contended that in the original affidavit of the plaint all the plaintiffs have signed but, in the Re-Affirmation, only one plaintiff has affirmed the affidavit and no competency has been filed on behalf of other plaintiffs.
11. Heard the learned Counsel for the respective parties, perused the materials on record and the judgment relied by the Counsel for the plaintiffs. The plaintiffs have filed the application for amendment in the plaint as indicated in the proposed amendment enclosed with the present application. The plaintiffs by way of amendment also intent to substitute the legal heirs of the plaintiff no. 4 and also intent to add the plaintiff nos. 8 and 9.
12. Order VI, Rule 17 of the Code of Civil Procedure reads as follows :

“17. Amendment of pleadings.—*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 questions in controversy between the 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.”

- 13.** The plaintiffs intent to elaborate the description of the suit property in paragraphs 1, 4 and Schedule “A” of the plaint. In paragraph 8 and prayer portion of the plaint, the plaintiffs intent to pray for eviction/ejectment of the defendant though original prayer of the plaintiffs in the suit was only for possession of the suit property. This Court finds that the said amendments will not change the nature and character of the suit and the said amendment is formal in nature.
- 14.** As regard the deletion of the name of the plaintiff no. 4 on account of the death of the plaintiff no. 4 and substitution of the legal heir of the plaintiff no. 4 and addition of the name of the plaintiff nos. 8 and 9 are not permissible within the preview of the provisions of Order VI, Rule 17 of the Code of Civil Procedure. In the Code specific provisions have been provided for substitution of the legal heir of the plaintiff on the death of the plaintiff. In the said Code, there is also a specific provision have been provided for addition of parties.
- 15.** In view of the above, this Court is of the view that substitution of the legal heirs of the plaintiff no. 4 and addition of the plaintiff nos. 8 and 9

is not permissible under Order VI, Rule 17 of the Code of Civil Procedure.

- 16.** In the circumstances mentioned above, this Court allow the prayer of the plaintiffs only with respect of amendment of paragraphs 1, 2, 4, 8, prayer (a), Schedule A and concise statement of the proposed amendment. As regard the remaining proposed amendments are rejected.
- 17.** The department is directed to carry out the amendment with respect of paragraphs 1, 2, 4, 8, prayer (a), Schedule A and Concise Statement within a period of three weeks from date. The plaintiffs are granted leave to re-verify the amended plaint within a week thereafter. The plaintiffs are also directed to serve the amended copy of the plaint to the defendants with a week thereafter.
- 18. G.A No. 4 of 2023** is thus **disposed of**.

(Krishna Rao, J.)