

(2011) 06 CAL CK 0061

Calcutta High Court

Case No: C.O. No. 1637 of 2009

Arun Manna

APPELLANT

Vs

Shyamapada Maity

RESPONDENT

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**Date of Decision:** June 14, 2011**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- West Bengal Land Reforms Act, 1955 - Section 8

**Hon'ble Judges:** Prasenjit Mandal, J**Bench:** Single Bench**Advocate:** R.N. Mahato and P.B. Mahata, for the Appellant; None appeared, for the Respondent

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**Judgement**

Prasenjit Mandal, J.

Challenge is to the Order No. 90 dated March 30, 2009 passed by the learned Civil Judge (Junior Division), 3rd Court, Midnapore in Misc. Case No. 13 of 1998.

2. The Petitioner filed an application u/s 8 of the West Bengal Land Reforms Act, 1955 and that application was converted into a Misc. Case No. 13 of 1998 against the opposite party. The Petitioner prayed for pre-emption of the sale and transfer of the property mentioned in the case. The opposite party is contesting the said misc. case. Thereafter, the Petitioner filed an application under Order 6 Rule 17 of the CPC praying for amendment of the misc. case praying for incorporation that he is a co-sharer of the plot in case and as such, he is praying for pre-emption on the ground of being a co-sharer of the plot in case. That application for amendment was rejected by the impugned order. Being aggrieved, the Petitioner has come up with this application.

3. Upon hearing the learned Counsel for the Petitioner and on going through the materials on record I find that the amendment sought for has been made by the Petitioner in view of the changed position of law of the West Bengal Premises

Tenancy Act. Since the word "holding" has been replaced by the word "plot of land" by the amendment of the said Act in 2000, the Petitioner has sought for amendment. If the proposed amendment is allowed, the effect would be the said application remains also one for pre-emption but on another ground also. Therefore, I find that cause of action remains unaltered; the nature of the proceeding also remains unaltered. Only another ground for pre-emption has been sought to be incorporated by the proposed amendment. Therefore, if the prayer is allowed there will be virtually no change of the nature and character of the application. But the proposed amendment has been sought for in view of the amended provision of the W.B.L.R. Act, 1955 in the year 2000.

4. Under the circumstances, in view of the decision, reported in 2004 (2) W.B.L.R. 905 particularly the paragraph Nos. 16, 17 and 20, I am of the view that the Petitioner is entitled to pray for such amendment of the proceeding. Therefore, I am of the view that the learned Trial Judge has committed errors in law in rejecting the said prayer. The impugned order cannot be sustained. Accordingly, the revisional application succeeds. It is allowed. The impugned order is hereby set aside. The application for amendment of the Misc. Case No. 13 of 1998 appearing as Annexure-"P1" to the application stands allowed. The learned Trial Judge shall proceed with the proceeding on the stage from allowing the said application.

5. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.