

18.11.2020
Item No. 05
Ct. No.19
PG

**C.O. 1269 of 2020
(Via Video Conference)
Smt. Kalyani Das & Ors.
Vs.
Sri Amitava Dhenki & Ors.**

Mr. Arnab Royfor petitioners

Mr. Dipanjan Datta,
Mr. Subhojit Chowdhury.....for opposite parties.

Mr. Roy, learned advocate appears on behalf of petitioners, who, being defendants, have impugned order no.11 dated 25th February, 2020 passed by Court of Civil Judge (Senior Division), Serampore, Hooghly in Title Appeal 18 of 2018 (Amitava Dhenki & Ors. – Versus – Smt. Kalyani Das & Ors.)

He submits, the suit was for declaration and injunction without consequent claim for recovery of possession. The suit was tried and suit Court, by judgment, dismissed it on the ground of want of appropriate relief. Opposite parties / plaintiffs' appealed. In the appeal, they applied for amendment of plaint. The amendment was allowed by impugned order. This is illegal since, after commencement of trial, amendment is only possible provided Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial. Here trial was concluded and

judgment delivered. Hence, there should be interference in setting aside impugned order.

Mr. Datta, learned advocate appears on behalf of opposite parties / plaintiffs. He submits, the amendment allowed is only in respect of consequential claim of recovery of possession, to cure the defect in the plaint. It does not relate to a matter of evidence in trial. The evidence is already on record. On curing the defect, plaintiffs will be able to pursue their remedy. Otherwise, by reason of the defect, they will be rendered remediless.

Perused impugned order. Submission made on behalf of opposite parties is accepted, being that the amendment does not relate to evidence, in this case already adduced, for application of the proviso. There does not appear to be any procedural defect of material irregularity committed by lower appellate Court in having made the order.

As such, there is no reason to interfere. The petition is dismissed.

(Arindam Sinha, J.)