

12.04.2021
Sl. No. 9
srm

C.O. No. 70 of 2021

Smt. Sarmistha Bhaduri

Vs.

Sri Soumya Sundar Bandyopadhyay

Mr. Kallol Basu,
Mr. Nilanjan Pal,
Mr. Swapnamoy Sarkar

...for the Petitioner.

Mr. Dipanjan Dutta
Mr. Sayan Dutta

... for the Opposite Party.

This revisional application has been filed challenging an order dated December 2, 2019 passed by the learned Civil Judge (Senior Division), Serampore, Hooghly in Title Suit No.107 of 2018

By the order impugned, the learned Court below allowed an application for amendment filed by the plaintiff. Two prayers were incorporated by the amendment, namely, declaration that the deeds of gift allegedly executed by the father and mother of the parties in favour of the petitioner, were null and void as also inoperative. The opposite party/plaintiff came to know about the alleged deeds of gift executed by Nirmalananda Bandyopadhyay during his lifetime in favour of the petitioner and the mother of the parties, and also the deed of gift executed by the mother

thereafter in favour of the petitioner only when the written statement was filed.

Accordingly, an amendment application was taken out by the petitioner for incorporating pleadings and prayers challenging the execution of the deeds of gift by Niramalananda Bandyopadhyay as also Mrs. Pranati Banerjee in favour of the petitioner. Accordingly, prayers were sought to be incorporated for a declaration that both the deeds of gifts were null, void, inoperative and not binding upon the parties.

The learned Court below upon considering the nature of the amendment sought to be made and coming to a finding that the said amendment was necessary for proper adjudication of the dispute between the parties, allowed the amendment application.

On the last occasion, the application was admitted for hearing on the basis of a decision of the Hon'ble Apex Court in the matter of M.K. Narayani Amma & Anr. vs. Chelera Kuniyil Devaki Amma & Ors. reported in 1995 Supp (2) SCC 643. In the said decision, the Hon'ble Apex Court held that if the property was gifted prior to the suit for partition then the property sought to be partitioned would not remain a joint property, and the relief of partition was not available to the

parties seeking partition. This decision was rendered after final hearing of the suit.

In this case, the petitioner filed a suit for partition against his sister. In the written statement, the sister came up with a contention that the property sought to be partitioned is her exclusive property by virtue of two deeds of gift. The petitioner sought to challenge the said deeds of gift by way of an amendment by incorporating two prayers for declaration that the said deeds of gift were void, inoperative and not binding.

The object of argument of Mr. Basu, learned Advocate for the petitioner that the property gifted to his client prior to the filing of the partition suit would not remain a joint property and as such the partition suit was not maintainable cannot be accepted at this stage. Until and unless the plaintiff is allowed to incorporate the prayers with regard to the validity of the deeds in his plaint and the suit is decided on its own merits along with the issue as to whether the deeds of gift were valid or not, the right of partition cannot be ruled out without proper trial. The correctness of the amendment sought for is not to be taken into account while considering the question of amendment.

Just because the prayers sought to be incorporated with regard to the deeds of gift is allowed to be incorporated in the plaint, it does not mean that the right of Mr. Basu's client gets extinguished and the property is accepted to be a joint one. These are all issues to be decided in the main suit. However, if the amendment is not allowed, the parties will be forced to initiate other proceedings. Amendment is allowed to avoid multiplicity of proceeding by incorporating all facts which are necessary for proper adjudication of the dispute between the parties.

In this suit for partition, the question whether the property is a joint property or not, or whether the property after the execution of the deeds of gifts was exclusively the property of the defendant is to be decided. The amendment has been taken out expeditiously, as soon as the execution of the deeds of gifts was disclosed in the written statement.

In the decision of **Ravejeetu Builders & developers vs. Narayanswamy & Sons** reported in **2015 (4) ICC (S.C.) 127**, the Hon'ble Apex Court laid down the criteria allowing such amendment. Those are primarily as hereunder:-

“(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

Under such circumstances, I do not find any reason to interfere with the order impugned.

Time to file the amended written statement is extended by a period of four weeks from date.

The learned Court below is requested to expedite the suit.

This revisional application is dismissed.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)