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23.08.2021
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In the High Court at Calcutta
Civil Jurisdiction
Appellate Side

C.O. No. 152 of 2020
(Via video conference)

Samima Bibi
-Vs.-
Hira Bibi alias Farida Yasmin & Anr.

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
Mr. Dyutiman Banerjee
...for the petitioner

Mr. Tanmoy Mukherjee
...for the opposite parties

Learned counsel for the petitioner contends that the trial court acted palpably without jurisdiction in refusing the proposed amendment sought by the plaintiff/petitioner in the plaint. The suit has been filed for permanent injunction in respect of a passage, to which the plaintiff/petitioner claims easementary right. By virtue of the proposed amendment, certain relevant facts were sought to be incorporated in the pleadings, as per learned counsel for the petitioner.

The transaction mentioned in the amendment application and the corresponding

changes in the sketch map to the schedule of the plaint were necessitated also by subsequent alleged encroachment of the suit passage by the defendants/opposite parties.

Learned counsel appearing for the defendants/opposite parties controverts such submissions and argues that the proposed amendment is not only inconsistent with the original pleadings but also incomplete, in the sense that the property, which was initially the subject-matter of the suit, has been sought to be extended to another plot by the proposed introduction of a new sketch map. Moreover, in the absence of any prayer to introduce a relief for recovery of possession, the statement made in the amendment application regarding alleged encroachment by the defendants loses its significance.

As such, it is contended by the opposite parties that the trial court was justified in rejecting the amendment application, since anything and everything sought to be amended cannot be permitted to be incorporated in the plaint, which would unnecessarily multiply and prolong the litigation.

It is seen from the original plaint, as rightly pointed out by learned counsel for the opposite parties, that the plaintiff/petitioner's claim to the suit property was not based merely on easementary rights but title as well.

By virtue of the proposed amendment, the petitioner has merely sought to furnish better particulars which might have relevant to the adjudication of the suit. The transactions sought to be incorporation by way of amendment and the introduction of the additional sketch map in the schedule are not entirely beyond the conspectus of the original pleadings but have substantial relevance to the original pleadings made in the plaint.

Although the trial court had no jurisdiction to enter into the merits of the proposed amendment at the stage of deciding the amendment application, the trial court has virtually done so by holding that the proposed amendment ultimately leads to an absurdity and inconsistency and has no meaning.

It is evident from the impugned order that the trial court failed to adopt a liberal view which is generally applied in deciding amendment applications, particularly in a case of pre-trial

amendment. The amendment-in-question having been filed prior to commencement of evidence, there was no justification for the trial court to preclude the petitioner from bringing the proposed amendment to the plaint.

Accordingly, C.O. No. 152 of 2020 is allowed, thereby setting aside Order No. 17 dated September 18, 2019, passed by the Civil Judge (Junior Division) at Lalbagh, District-Murshidabad in Title Suit No. 136 of 2017 and allowing the application dated April 02, 2019, filed by the plaintiff/petitioner under Order VI Rule 17 of the Code of Civil Procedure for amendment of her plaint.

The petitioner shall file her amended plaint within a fortnight from date in the court below. Additional written statement, if any, shall be filed by the defendants/opposite parties within a fortnight thereafter.

The parties as well as the trial court shall act on the written communication of the learned advocates appearing for the parties, accompanied by a server copy of this order, without insisting upon prior production of a certified copy thereof.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)