

07
17.08.2021
TN

CO No.438 of 2021

Taher Saha and others

Vs.

Elahi Saha and others

(Via video conference)

Mr. Aniruddha Chatterjee,
Mr. Saptarshi Kumar Mal

.... for the petitioners

Mr. Mukteswar Maity

.... for the opposite party nos.1 and 2

Learned counsel for the petitioners argues that the trial court acted palpably without jurisdiction in allowing an amendment of the plaint, thereby seeking to incorporate a challenge to an agreement of the year 1980 in an amendment application filed on September 23, 2020.

Learned counsel appearing for the petitioners argues that such proposed amendment is palpably time-barred and ought to be rejected on the face of it.

Learned counsel appearing for the plaintiffs/opposite parties, on the other hand, contends that the amendment includes subsequent

events as well and that the challenge to the agreement of 1980 was only proposed to be introduced since the plaintiffs had no occasion to have knowledge about the said document prior to filing of the written statement by the defendant in the present suit as recently as on October 31, 2019.

However, in reply, learned counsel for the petitioners points out that, in paragraph no.6 of the plaint, the plaintiffs/opposite parties have specifically referred to a suit, in which a similar written statement had already been filed in the year 2016, mentioning about the agreement of 1980. In order to bye-pass the fact of having acquired knowledge of the agreement in 2016 itself, the plaintiffs/opposite parties adopted the oblique method of permitting the previous suit to be dismissed for default and to file the present suit without taking out any challenge to the 1980 agreement. As such, as on September 23, 2020, when the amendment application in the current suit was filed, the relief already stood time-barred, since the date of knowledge attributable to the plaintiffs had to be taken at least from the year 2016. Since the limitation for challenging a document is three years, such belated introduction of the said relief was patently time-barred.

It is evident from the averments made in the written statement filed in the previous suit that learned counsel for the petitioners is justified in making his arguments.

Despite having knowledge of the deed at least in the year 2016, when the written statement in the previous suit was filed, the petitioners attempt to feign ignorance regarding the deed till filing of the written statement in the present suit in 2019.

Since the previous suit (Title Suit No.207 of 2015) has been categorically mentioned in paragraph no.6 of the plaint of the current suit, it would not be improper for the court to look into the pleadings of the said suit, since the same was referred to in the plaint itself, for the purpose of adjudicating whether the amendment regarding the 1980 agreement ought to be precluded at the inception, being palpably time-barred.

As such, the proposed amendment, which was allowed in its entirety by the trial court, could not have been permitted at least in respect of paragraph no.8 of the schedule of amendment as given in the said application, which seeks to incorporate such challenge to the agreement of 1980.

Accordingly, CO No.438 of 2021 is partially allowed, thereby setting aside the portion of the

impugned order dated January 18, 2021, whereby the Civil Judge (Senior Division), Second Court at Contai allowed paragraph no.8 of the schedule of the amendment application, thereby incorporating a challenge to an agreement dated February 2, 1980 in the plaint.

It is, however, made clear that the amendment application is deemed to stand allowed in respect of paragraph nos.1 to 7 of the schedule of amendment and such portion of the impugned order allowing paragraph nos.1 to 7 is not interfered with by this court.

In the event the plaintiffs have already filed the amended plaint in terms of the impugned order, the newly incorporated paragraph therein, which corresponds with paragraph no.8 of the schedule of the amendment application dated September 23, 2020, shall stand expunged from the records.

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 with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)