

02. 25.11.2021
Ct. No.21
BR

C.O. 504 of 2021

**Subrata Talapatra and Ors.
-Versus-
Smt. Smriti Chakraborty**

(Through Video Conference)

Mr. Ram Krishna Chandra
...for the Petitioners.
Mr. Srikanta Paul

... for the Opposite Party

Being aggrieved by the order dated 4.3.2020 passed by learned Civil Judge (Senior Division), 5th Court, Alipore in Title Suit No. 88 of 2012 the plaintiffs/petitioners have preferred this revisional application. The learned Court below vide impugned order has partly allowed the amendment petition filed by the plaintiffs permitting plaintiffs to delete the name of Subrata Talapatra and refused to amend the schedule of the property, which is the subject matter of the partition suit.

The learned lawyer for the petitioners draws the attention of the Court to the schedule of the Patta of the suit property and which clearly shows the government was pleased to grant Patta of 3 Cottah and 12 Chittakas land and not only 3 Cottah land to Smt Raj Laksmi Chakraborty, the predecessor in interest of the parties to the revision application.

However, Ld. Advocate appearing for the respondents submits that he has no objection if the amendment as prayed by the petitioner in the schedule of the plaint is allowed.

Prima facie from the materials in record it is seen the petitioners being the plaintiffs in Title Suit no. 88 of 2012 have prayed for partition of the property situated on the Patta land of Smt Raj Laksmi Chakraborty, the predecessor in interest of both the parties to the suit. The Patta clearly shows government settled 3 Cottah 12 Chittakas Homestead Land pertaining to plot no. 3050 of Mouza Kasba to Smt Raj Laksmi Chakraborty in the year 1990. I find such facts being mentioned in the para 1 of the plaint, but due to inadvertence only 3 Cottah being mentioned in the schedule of the plaint.

Therefore, this court finds the Ld. Court below has wrongly held that if the amendment as sought by the petitioners for incorporation of 12 Chittakas land after 3 Cottah land in scheduled is allowed, it is likely to change the basic structure of the suit upon which the suit property rests. Rather, this court finds the proposed amendment is necessary to incorporate in the schedule of the plaint for proper allocation of share to the co-sharers at the time of drawing of the decree of partition.

The part amendment rejected by the Ld. Court below is hereby allowed and Ld. Court below is directed to incorporate the expression "12 Chittakas" after the

expression (Three) Cottahs in the scheduled of the land in the plaint of the plaintiff. The impugned order dated 04.03.2020 stands modified. Send copy of this order to the Ld. Court below for doing needful.

Accordingly, C.O. No. 504 of 2021 is hereby disposed of.

Learned Civil Judge (Senior Division), 5th Court, Alipore is requested to expedite the hearing/ trial of the Title Suit No. 88 of 2012.

There will be no order as to costs.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Kesang Doma Bhutia, J.)