

S/L 50
23.02.2021
Court. No. 19
GB

C.O. 887 of 2019

Kuldevi Chandi Thakurani
Represented by Shebaita
Sri Natendra Nath Jana & Anr.

Vs.

Kuldevi Chandi Thakurani
Represented by Sri Niranjan Jana & Ors.

(Through Video Conference)

Mr. Sounak Bhattacharya.

... for the Petitioners.

Mr. Amit Baran Dash.

... for the Opposite Parties.

This revisional application has been filed by the plaintiffs being aggrieved by an order dated January 21, 2019 passed by the learned Civil Judge (Junior Division), 1st Court at Contai in Title Suit No.87 of 2015.

The petitioners are aggrieved by the order impugned, inasmuch as, after the evidence of DW was closed, an application for amendment of the written statement was allowed by the learned court below.

Mr. Bhattacharya, learned advocate for the petitioners submits that the learned court below failed to apply its mind to the proviso to Order VI, Rule 17 of the Code of Civil Procedure which categorically provides that amendment after trial has commenced

should only be allowed in rare cases upon the satisfaction of the court that the parties seeking such amendment, even after due diligence, could not have brought the matter before the learned court below.

Mr. Bhattacharya refers to the order sheet in order to place before the Court that trial has commenced in the instant case. He further submitted that the Division Bench of this Court in the matter of ***Sree Sree Iswar Radha Behari Jew and Sree Sree Iswar Salgram Jew represented by Basudeb Das Versus Smalati P Soni*** has categorically stated that trial would commenced on and from the date when the Court applies its mind after the affidavit of evidence is filed and when the first witness proves his affidavit of evidence or such witness seeks to prove a document for it to be tendered in evidence or the cross-examination of such witness begins, whichever is earlier.

Mr. Bhattacharya further submits that the amendment was not necessary for the final adjudication of the dispute. That the amendment amounted to withdrawal of admission. That the amendment would result in setting up contradictory pleas. He refers to the application for amendment in order to show that there was not a single line containing any reason as to why the amendment was

necessary and was filed at a belated stage. He prays that the order impugned be set aside.

Mr. Bhattacharya relies on the decision of ***M/s. Modi Spinning & Weaving Mills Co. Ltd. and Another Versus M/s. Ladha Ram & Co.***, reported in ***(1976) 4 SCC 320***. The Hon'ble Apex Court laid down the basic principle that inconsistent pleas could not be allowed by way of an amendment in the written statement.

The application for amendment does not contain any explanation as to why the said application has been filed belatedly. However, the schedule of the amendment is an explanation to what has already been stated in paragraph 15 of the written statement. In the written statement it has already been stated that even if Jashodamoni and Matangini had dedicated the suit property in the name of Sri Chandi Thakurani, no shebait was appointed as such, Natendra Nath Jana and Niranjana Jana used to perform the *Seba Puja*. That *Thakur Jew* was the family deity and a separate small *Mandir* existed in respect of Sri Chandi Thakurani and only once a year in the month of *Baishak* or *Jaistha* on a Saturday or a Tuesday a puja used to be held. During the other parts of the year no separate puja was held for Sri Chandi Thakurani. Jashodamoni and Matangini used

to bear the expenses of such puja personally from their own pockets. The two deeds mentioning dedication to Sri Chandi Thakurai were just paper transactions and the suit premises should be treated as a private property of the defendant. By way of an amendment, the defendant wanted to introduce another paragraph to the effect that the deeds created by Jashodamoni and Matangini may have mentioned the dedication to Thakurani but actually there was never any permanent deity of Chandi Thakurani and there was no *nitya puja*. Once every year, an idol of Chandi Thakurani used to be made and a puja used to be performed. Thus, the suit property was a private property of the parties.

The amendment, in my opinion does not take away any admission nor does it create any inconsistency as has also been held by the learned court below. It is clarificatory in nature. In the decision of ***Baldev Singh and Others Versus Manohar Singh and Another*** reported in **(2006) 6 Supreme Court Cases 498** the Hon'ble Apex Court held that even if there was a delay of three years in filing an application for amendment, the same could not be rejected, when no serious prejudice was caused to the plaintiff so as to take away any accrued right. The Hon'ble Apex Court held that it was always open

to the parties to file an amendment to explain any admission in the written statement. That amendment of the written statement should be allowed liberally. That amendment of a written statement and that of a plaint stood on different footing. It is open to a party to set up alternative defenses in one written statement unlike a plaint. In the decision of ***Md. Sajid Khan & Ors. Versus M/s. Ashutosh Roy Prafulla Kumar Roy & Ors.*** reported in ***2019(4) Indian Civil Cases 11 (Cal.)*** it has been held that the court should always give liberty to amend the pleading unless it was satisfied that the party applying was acting mala fide or by his blunder had caused injury to his opponent which could not be compensated by an order of cost.

The learned court below while considering the application for amendment, came to the conclusion that the amendment would not change the nature and character of the suit and did not also amount to withdrawal of any admission.

It is an admitted position that the amendment was sought for at a belated stage, but the amendment neither amounts to any withdrawal of any admission nor does it set up contradictory pleas. On the other hand, the amendment sought for is adding a further explanation to the pleadings of the defendant appearing in paragraph 15 of the written statement.

The amendment has not caused any serious prejudice and injury to the defendant, which cannot be compensated in terms of money. The amendment sought for is only an explanatory and clarificatory in nature.

Thus, I do not find any reason to interfere with the order of the learned court below. However, the defendant must compensate the petitioner for the loss of time on account of such belated amendment. The learned court below shall proceed with the suit in accordance with law upon satisfying itself that cost of Rs.20,000/- has been paid by the defendant to the plaintiff. Such payment be made by way of an account payee cheque drawn in the name of the Natendra Nath Jana, the petitioner no.1 herein. Such cheque to be paid within a period of three weeks from date. Receipt shall be granted to the defendant showing acceptance of the cheque. The receipt shall be deposited in the learned court below. The petitioner will be entitled to file an additional affidavit-in-chief if necessary and recall the PWs in order to deal with the pleadings in the amended written statement. The DWs will also be at liberty to adduce further evidence.

In case of default in payment of the amount as directed by this Court within the aforementioned period, the learned court below shall proceed on the

basis of the unamended written statement filed by the defendant.

With the above observations, the revisional application is disposed of.

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

(Shampa Sarkar, J.)