

S/L 56
17.03.2021
Court. No. 19
GB

C.O. 633 of 2021

Sri Amiya Mishra & Ors.
Vs.
Sri Subhash Mishra & Ors.

(Through Video Conference)

Mr. Debasish Sur,
Mr. Angshuman Patra.

...for the Petitioners.

This revisional application has been filed against an order dated February 18, 2021 passed by the learned Civil Judge (Junior Division), 1st Court, Khatra, by which an application under Order VI, Rule 17 of the Code of Civil Procedure for amendment of the plaint in Title Suit No.3 of 2018 was allowed.

According to the petitioners the said application ought not to have been allowed at the stage of evidence. The suit was originally for declaration of title and permanent injunction. Thereafter, according to the plaintiffs, the plaintiffs were dispossessed during the pendency of the suit, which fact also came up in the cross-examination of P.W.1 and as such, a prayer for amendment was made for incorporating the prayer for recovery of possession and the fact of dispossession.

The learned advocate for the petitioners submits that the amendment was belated and not permissible in law.

In my opinion, the learned court below exercised its discretion as per law and I do not find any reason to interfere

with the order impugned. It is also settled that the suit shall not fail if a prayer for recovery of possession is not made in the event the plaintiffs are not in possession but, the plaintiffs shall be allowed an opportunity to amend the plaint. If such amendment is not allowed, the suit shall be hit by proviso to Section 34 of the Specific Relief Act.

Moreover, when a second suit for recovery of possession could be filed, there is no reason why the said amendment cannot be allowed. Whether the prayer for recovery of possession was time barred or not, will only come into the light on the evidence because the specific case of the plaintiffs is that the dispossession happened during the pendency of the suit. The correctness of the amendment is not to be decided at the stage of amendment but these are matters of trial on evidence. The defendants will have the right to raise such objections at the trial.

Thus, this Court does not find any illegality with the order impugned.

The petitioners are granted liberty to file additional written statement within three weeks from date. The parties will be at liberty to recall their witnesses, if necessary, for adducing further evidence on the basis of the amendment.

The revisional application is disposed of.

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.)