

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

Present:-

The Hon'ble Justice Subhasis Dasgupta.

CO. No. 935 of 2021

Shrimati Archana Das & Anr.

Vs.

Subrata Dawn & Ors.

For the Petitioners/Plaintiffs : Mr. R. N. Mahato, Adv.
Mr. Aritra Shankar Ray, Adv.

For the Defendants/
Opposite Parties : Mr. Probal Kumar Mukherjee, Sr. Adv.
Mr. Tarak Nath Halder, Adv.

Heard On : 31.08.2021.

Judgment : 06.09.2021.

Subhasis Dasgupta, J:-

This revisional application being C.O. 935 of 2021 is directed against the order dated 23rd February, 2021, passed in Title Suit No. 157 of 2007, by learned Civil Judge (Senior Division) at Sealdah rejecting the amendment petition, filed by the petitioners/plaintiffs, is the subject of challenge in this revisional application.

Mr. Mahato, representing the petitioners/plaintiffs, adverting to Para-4 of instant revisional application submitted that necessity for filing amendment application by the plaintiffs arose after the prayer for the

amendment of written statement, filed by defendant no. 2, had been rejected by the Hon'ble High Court in C.O. No. 3113 of 2019.

Mr. Mahato, took me to travel to Para-7 of the amendment application filed by the plaintiffs in T.S. 157 of 2007, wherefrom it appears that plaintiffs derived their knowledge of other properties of their predecessor-in-interest, and the defendant no. 2 also derived his respective knowledge of some other properties, which were established by the defendants from earning of properties and/or family business of plaintiffs and defendant nos. 1 & 2, and entire effort of proposed amendment was to bring those properties in the hotchpot for desired relief of partition.

Mr. Mahato, was very vocal in his submission that in spite of due diligence, the party proposing amendment could not have raised the matter before commencement of the trial, and as such the amendment should be allowed for the entire properties of their predecessor-in-interest to be incorporated in the hotchpot for the proposed partition pending between the parties.

Accordingly, Mr. Mahato submitted that the proviso appended to Order VI Rule 17 C.P.C. will not come in the way for raising objection to the proposed amendment.

The question thus raised by Mr. Mahato is that learned court below had acted with material irregularity in rejecting the prayer for amendment without truly appreciating the proviso contained in Order VI Rule 17

C.P.C., that the petitioner in spite of due diligence could not have raised the matter before commencement of the trial.

Mr. Prabal Kumar Mukherjee, learned senior advocate representing the opposite parties submitted that the prayer for amendment, proposed by the plaintiffs, had been admittedly made subsequent to the rejection of prayer for amendment application for written statement filed by the 2nd defendant. Mr. Mukherjee further submitted that when a Coordinate Bench of this Court in connection with C.O. No. 3113 of 2019, had affirmed the order of rejection for amendment of written statement filed by defendant no. 2, the same principle should be made applicable over the facts and circumstances of this case, as in any case the plaintiffs could not be allowed to be at a much more advantageous stage, than that of defendant no. 2, whose prayer for amendment of written statement had already been rejected. Incidentally, Mr. Mukherjee submitted that the prayer for transposition of defendant no. 2 to the category of plaintiff had also been refused.

It was at the stage of argument, defendant no. 2 sought for amendment of written statement seeking to incorporate certain properties for being brought to hotchpot of the present suit without the consent and permission of the other defendants, with whom defendant no. 2 jointly contested the suit.

The proposed amendment of written statement, at the instance of defendant no. 2, vide C.O. No. 3113 of 2019 was in deviation of the

original defence taken by defendant no. 2 along with two other defendants. Since the amendment of the written statement, as proposed by the defendant no. 2 was made at a belated stage, when the suit was fixed for argument stage, the Coordinate Bench of this Court in C.O. No. 3113 of 2019 had rejected the application for amendment of written statement.

The only point is required to be addressed by this Court is whether the prayer for amendment, as proposed by the plaintiffs was rightly rejected or not.

Upon perusal of the impugned order, it appears that both the parties to this case adduced evidence each, and the suit was fixed for argument way back in September, 2017, and even thereafter argument was heard on several occasions. It is thus because of the pendency of this revisional application, the logical conclusion of the suit, instituted in the year 2007, could not be reached.

The basis of the proposed amendment is gathering of knowledge from the application for amendment of written statement filed by defendant no. 2, what has already been addressed in C.O. No. 3113 of 2019, holding that the proposed amendment of written statement was in deviation of original defence taken by defendant no. 2 along with two other defendants. The very basis of acquiring knowledge of petitioners being violative of proviso appended to Order VI Rule 17 C.P.C., same can not be accepted. The plea taken by the Mr. Mahato that at the relevant point of

time in spite of due diligence, plaintiffs could not have raised the matter before the commencement of trial is accordingly without sanction of law.

Without any controversy, it may be said that the proposed amendment is not a product of subsequent event, and the learned court below having considered the true purport of provisions contained in proviso appended to Order VI Rule 17 C.P.C., has rightly rejected the amendment.

This revisional application fails being without any merits.

Learned court below is directed to expeditiously dispose the suit upon hearing the argument, advanced by the parties to this case, so that the logical conclusion of the case may be reached at an early date.

The revisional application accordingly stands dismissed. The impugned order must go unaltered.

Urgent certified copy of this order and judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Subhasis Dasgupta, J.)