

02.07.2021
TN

CO No.1124 of 2021

Meghnath Dey and others
Vs.
Arindam Duta and others

(Via video conference)

Mr. Partha Pratim Roy

.... for the petitioners

Mr. Kallol Basu

.... for opposite parties

The present challenge has been preferred by defendants in a suit for partition to an order, whereby the petitioners' additional written statement was refused to be accepted by the trial court.

Learned counsel for the petitioners contends that the court below went beyond its jurisdiction in adjudicating on merits the proposed facts which were sought to be brought in by way of such additional written statement, even without

permitting the said facts to be incorporated in the pleadings.

That apart, it is contended that the facts sought to be incorporated were relevant for the purpose of deciding the suit.

Learned counsel appearing for the opposite parties controverts such submission and submits that, apart from the additional facts sought to be brought in by the defendants by way of the additional written statement being beyond the scope of the amendment which necessitated the additional written statement, such pleadings are barred *ex facie* on the ground of limitation. It is further argued that the gift deed-in-question now sought to be relied on by the defendants, was never mentioned in the original written statement of the defendants; but now they are seeking to introduce such allegations in the pleadings in the garb of an additional written statement.

It is evident from the records that the additional written statement filed by the petitioners was beyond the scope of the amendment of the plaint, as a consequence of which such additional written statement was filed. It is well-settled that the limited scope of filing additional written statement, consequent to an amendment of the

plaint, is restricted only within the ambit of controverting and/or dealing with the amended portion of the plaint.

Hence, the trial court was justified in refusing the portion of the additional written statement which sought to incorporate a challenge to the gift deed.

However, a scope ought to be given to the petitioners to file a fresh additional written statement restricted to the amendment brought on record by the plaintiffs.

In such view of the matter, CO No.1124 of 2021 is disposed of by modifying the impugned order to the effect that, although the rejection of the additional written statement, as filed by the petitioners, stands rejected, the impugned order shall not preclude the petitioners from filing a fresh additional written statement, restricting their pleadings therein only to deal with the amended portion of the plaint. Anything redundant and/or beyond the scope of the amendment shall not be incorporated in such additional written statement. If such an additional written statement is filed, the same will be accepted by the trial court, provided the aforesaid stipulations are adhered to.

However, since the trial court did not permit the incorporation of the superfluous pleadings pertaining to a gift deed, it was beyond the jurisdiction of the court below to adjudicate such point on merits, while in the same breath refusing such averments to be incorporated in the pleadings and/or inviting evidence thereon.

Hence, it is made clear that the observations made in the impugned order in the penultimate paragraph thereof, pertaining to the superfluous portions of the rejected additional written statement pertaining to a gift deed, shall not influence the trial court at any future stage of the suit, including any interlocutory application which may be filed by the parties. However, all objections to the incorporation of such pleadings, taken by the plaintiffs, shall be kept open to be canvassed before the court below in the event the defendants/petitioners seek to bring in such amendments by way of an application under Order VI Rule 17 of the Code.

It is clarified that all observations made on the merits of the superfluous pleadings relating to the gift deed, beyond the amended portion of the plaint, both by this court as well as the court below, are only tentative in nature and shall not

influence the court below in any manner at any future stage of the suit and/or interlocutory matters filed in connection therewith.

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.)