

26th July,
2021
(AK)
15

C.O. 1216 of 2021

**Sri Subrata Dawn
Vs.
Sri Partha Saha**

(Via video conference)

Mr. Kuntal Banerjee

...For the Petitioner.

It is contended by Mr. Kuntal Banerjee, learned counsel appearing for the defendant/petitioner, that the court below acted without jurisdiction in allowing the application of the plaintiff/opposite party for amendment of the plaint.

Learned counsel contends that the amendment, if allowed, would not only change the nature and character of the suit, since the plaintiff had initially claimed to be in possession of the suit property but subsequently sought recovery of possession, it would also denude the trial court from pecuniary jurisdiction to take up the matter.

Learned counsel places relevant portions of the amendment application and original plaint in support of his contentions.

However, it appears from a perusal of the schedule of the amendment allowed by the court below that the plaintiff has categorically made an averment that,

subsequent to the filing of the suit, the defendant broke open the lock of the front gate and forcibly entered into the suit property, thereby dispossessing the plaintiff.

In such view of the matter, as it is well-settled that subsequent events can be brought in by way of amendment, the introduction of such averment and the necessary consequential relief of recovery of possession were rightly allowed.

That apart, it is also well-settled that the mere fact that the amendment would render the trial court devoid of pecuniary jurisdiction to hear the suit further is, *ipso facto*, not a ground for refusal of amendment, since the proper course of action is for the trial court, if allowing such amendment, to refer the suit thereafter to the appropriate court having pecuniary jurisdiction to hear the matter, if so required.

It is a settled proposition of law that the merits of a proposed amendment cannot be entered into by the court at the time of adjudicating the amendment application.

In such view of the matter, the trial court committed no jurisdictional error in allowing the amendment application of the plaintiff/opposite party.

Accordingly, C.O. 1216 of 2021 is dismissed, thereby affirming Order no.17 dated March 25, 2021 passed by the Civil Judge (Junior Division) Third court at Asansol, District-Paschim Burdwan in Title Suit No.56 of 2019.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)