

20th July,
2021
(AK)
24

C.O. 1218 of 2021

**Paritosh Sarkar
Vs.
Jahiruddin Mondal and others**

(Via video conference)

Mr. Surya Prasad Chattopadhyay
Mr. Arjun Samanta
...For the Petitioner.

Mr. Iftekar Munshi
...For the Opposite Party.

This revisional application has been preferred by the plaintiff in a suit, initially filed for permanent injunction asserting the plaintiff/petitioner's possession in respect of the suit property but subsequently seeking an amendment to incorporate an allegation regarding subsequent dispossession by the defendants and seeking to introduce the relief of recovery of possession.

Such application was turned down by the learned trial Judge on the premise that the amendment would wholly displace the plaintiff's suit and would introduce a totally different, new and inconsistent case, thereby changing the nature and character of the suit in its entirety.

Learned counsel for the petitioner argues that events subsequent to filing of the suit necessitated the amendment. It is well-settled, learned counsel argues,

that subsequent events can always be permitted to be brought on record by way of amendment.

Learned counsel appearing for the defendants/opposite parties contends that the amendment sought by the plaintiff was *ex facie* barred by limitation.

It is contended that the plaintiff was not in possession of the suit property since the year 1988 and places reliance on the GD entry annexed along with the amendment application by the plaintiff himself. It is further contended that the court below was justified in arriving at the conclusion that the proposed amendment would change the nature and character of the suit property.

Upon hearing learned counsel for the parties, it is evident from the proposed amendment that the same contains an allegation in respect of an event subsequent to the filing of the suit.

As far as the question of limitation is concerned, the merits of such question cannot be gone into at the stage of deciding an amendment application, since it is not evident or admitted in the plaint and/or the amendment application that the petitioner was dispossessed prior to twelve years from the institution of the suit.

The merits of the contention pertaining to limitation as well as the other contentions raised by the parties

shall, in any event, be open for being argued on evidence at the stage of hearing of the suit. However, at the amendment stage, such question could not be adjudicated.

Thus, the trial court refused to exercise jurisdiction vested in it by law in refusing the proposed amendment.

Accordingly, C.O. 1218 of 2021 is allowed, thereby setting aside Order no. 20 dated September 26, 2019 passed by the trial Court in Title Suit No. 216 of 2018 and allowing the amendment as sought for by the plaintiff/petitioner in the court below.

The petitioner shall file his amended plaint within a fortnight from the communication of this order to the court below.

Additional written statement(s), if any, shall be filed by the defendants/opposite parties within a fortnight thereafter.

It is made clear that the merits of the contentions of either of the parties in the suit have not been gone into at this stage.

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.)