

29.9.
2021

CO 1342 of 2021

Baren Saur & Ors.
-vs-
Gopal Kha & Ors.

(Via Video Conference)

Mr. Nilendra Narayan Ray
.... For the petitioner

The defendant Nos. 1 (a) to 1 (d) in a suit for declaration and title, partition and for consequential reliefs have filed the instant application challenging the Order No. 140 dated March 6, 2021 passed by the learned Civil Judge (Senior Division), Bishnuur in Title Suit No. 25 of 2008 .

By the order impugned the applicaton filed by the plaintiffs under Order 6 Rule 17 of the Civil Procedure Code was allowed.

The learned advocate for the petitioners submits that the plaintiffs moved this application for amendment after the completion of cross-examination of the defendant witness no. 1. According to him the application for amendment is barred under the proviso to Order 6 Rule 17 of the CPC.

I have heard the learned advocate for the petitioner and on perusal of the material on record.

Record reveals that the application for amendment was filed by the plaintiffs on March 27, 2009 after serving

a copy of the same upon the defendants. It further appears from the record that the original case record of the suit was not available for the period from March 13, 2009 to April 8, 2011. Only after being pointed out by the learned advocate for the plaintiff that such application was pending, a date was fixed for hearing on April 2, 2020. It is not in dispute that the trial of the instant case commenced after the filing of the application for amendment by the plaintiff.

The plaintiff filed the application prior to commencement of trial. The same could not be taken up for hearing for a considerable period of time due to non-availability of records. The plaintiff cannot be penalized for fixation of date by the Court for hearing of the amendment application after commencement of trial.

In view thereof, proviso to Order 6 Rule 17 of the Code has no manner of application to the facts of the instant case. The amendment sought for by the plaintiffs is also necessary for the purpose of deciding the real controversy between the parties to the suit.

The learned Trial Judge by a reasoned order allowed the said application for amendment of plaint. The impugned order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India .

The learned advocate for the petitioner submits that the time to file additional written statement be extended .

The defendants /petitioners are at liberty to approach the learned Court below with the prayer for extension of time to file written statement.

CO 1342 of 2021 is disposed of accordingly.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocate for the parties on usual undertakings.

(*Hiranmay Bhattacharyya, J.*)