

(06)
18.08.2021
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

(Via Video Conference)

CO No. 2001 of 2019

**Pratap Narayan Giri
-versus-
Asit Baran Giri**

Mr. Sadananda Ganguli,
Mr. Kallol Kumar Maity,

... for the petitioner.

Mr. Saunak Bhattacharya,
Mr. Manish Kumar Das, ... for the opposite party.

The application under Article 227 of the Constitution of India is directed against the order no. 110 dated June 14, 2019 passed by the 2nd Court of learned Additional Civil Judge, (Junior Division), Contai, District: Purba Medinipur in Title Suit No. 05 of 2011.

The petitioner is the plaintiff of the said suit. The learned Trial Judge by the order impugned has dismissed an application filed by the petitioner seeking amendment of the plaint.

Mr. Sadananda Ganguli, learned counsel appearing on behalf of the petitioner submits that the learned Trial Judge has committed jurisdictional error in refusing the prayer of the petitioner for amendment of the plaint on the ground that by the proposed amendment the petitioner is throwing challenge to the earlier Commissioner's report accepted up to the High Court in C.O. 1560 of 2018 since the veracity of the facts sought to be

incorporated in the pleadings by way of said amendment or the question whether the petitioner would ultimately be able to prove the said facts or not are not at all relevant considerations in allowing or rejecting an application for amendment.

Mr. Sounak Bhattacharyya, learned counsel appearing on behalf of the defendant/opposite party took an initial point of maintainability of the said application for amendment on the ground that the trial of the suit has commenced but the said application fails to fulfill the requirement of the proviso appended to Order VI Rule 17 of the Code to bring the said application out of the mischief of the said provision of the Code.

Mr. Ganguli responding to the said argument of Mr. Bhattacharyya submits that the petitioner has already tendered his evidence-in-chief but the cross-examination of the said witness is yet to commence, the said stage signifies that trial of the suit has not commenced, he relies on the Division Bench decision of this Court in the case of ***Sree Sree Iswar Radha Behari Jew vs. Malati P. Soni*** reported in **AIR 2019 Calcutta 131** in support of his said contention.

Mr. Bhattacharya replied that tendering of evidence-in-chief is sufficient to indicate that the trial of the suit has commenced as has also been held by the Division Bench of this Court in the aforementioned decision relied on by Mr. Ganguli.

Heard the learned advocates appearing for the parties, perused the materials-on-record.

The earlier Advocate Commissioner was appointed at the instance of the petitioner but the petitioner was not satisfied with the said report, his challenge to the said report also failed

up to the High Court but on the said ground the petitioner's prayer for amendment to incorporate facts regarding holding inspection of the suit property by another Commissioner personally appointed by the petitioner cannot be refused since it would amount to going into the merit of the proposed amendment which is not permissible at the stage of dealing with an application under Order VI Rule 17 of the Code.

However, record shows that the plaintiff has tendered his evidence-in-chief; such stage signifies commencement of trial of the suit, and so has been held by the Division Bench also in the decision relied on by Mr. Ganguli.

The application fails to fulfill the requirement envisaged under proviso appended to Order VI Rule 17 of the Code to bring the said application out of the mischief of the said provision of the Code.

This Court, although, is not approving the reasoning of the order impugned but conclusion being correct, is not inclined to interfere with the order impugned.

C.O. 2001 of 2019 is dismissed accordingly without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)