

AD. 10.
August 9, 2021.
MNS.

C. O. No. 4039 of 2019
(**Via video conference**)

Hiralal Dey and another
Vs.
Sri Jagannath Dutta and others

Mr. Partha Pratim Roy,
Mr. Sayantan Hazra

... for the petitioners.

Mr. Sudeep Sanyal,
Mr. Snehasis Jana,
Ms. Lopamudra Moitra,
Ms. Tutun Das

...for the opposite parties.

Learned counsel for the plaintiffs-petitioners argues that the trial court acted without jurisdiction in rejecting the petitioners' application for amendment of plaint, seeking to introduce certain elaborations to the original pleadings and also to incorporate the names of the heirs and legal representatives of the two deceased plaintiffs, who had already been substituted in connection with a miscellaneous appeal arising from the suit.

It is argued that the substitution in the appellate court ought to be deemed to percolate down to the suit as well. Moreover, in view of the trial court's finding, that the amendment does not change the basic nature and character of the suit but is helpful for

the purpose of adjudicating the matter-in-dispute, the trial court acted patently without jurisdiction in rejecting the amendment application as well, on the hyper-technical ground that the names of the heirs given in the appellate court and substituted therein were subtly different from those given in the amendment application in the suit.

Learned counsel appearing for the defendants-opposite parties contends that the trial court does not have the authority under law to sit in judgement over an order passed by the appellate court.

In the present case, at the instance of the revisionists-petitioners themselves, the appellate court permitted substitution of the heirs and legal representatives of the deceased plaintiffs/appellants, wherein the names of two of the proposed heirs were mentioned differently than in the present amendment application.

As such, it is beyond the scope of the trial court to correct such position and rectify the names of the heirs of any of the parties, in contravention of the order of the appellate court.

However, considering the scope of the amendment, it is evident that a portion thereof is for incorporation of the correct names of the said two heirs, whose names were mentioned incorrectly

before the appellate court by the plaintiffs, the variations being minor.

Allowing such an amendment would not amount to modifying the appellate court's substitution order, more so since the miscellaneous appeal was restricted to the limited scope of adjudicating on the merits of the refusal of injunction by the trial court and cannot be deemed to be binding for all times to come in respect of the suit and/or subsequent stages thereof. That apart, since the plaintiffs admit that the error was inadvertent and now seek to rectify the names of the two heirs-in-question and since the variations of names were minor in nature, there was no justification for the trial court to refuse such amendment on a hyper-technical ground.

As far as the rest of the proposed amendment is concerned, the trial court itself found that those are germane for deciding the suit. It also appears from an independent perusal by this Court that the pleadings sought to be incorporated additionally are in the nature of elaboration of the original pleadings in the plaint and for furnishing further particulars, which ought to have been allowed anyway.

As such, the trial court acted without jurisdiction in rejecting the amendment application filed by the plaintiffs-petitioners.

Accordingly, C. O. No. 4039 of 2019 is allowed on contest, thereby setting aside order no. 111 dated September 24, 2019 passed by the Civil Judge (Junior Division) at Ghatal, District- Pachim Medinipur in Title Suit No. 08 of 2010 (Old T. S. No. 137/09) and allowing the plaintiffs' application for amendment of plaint.

The plaintiffs shall file their amended plaint, in consonance with the schedule of the amendment application hereby allowed, within a fortnight from date, before the trial court. Additional written statement, if any, shall be filed by the defendants-opposite parties within a fortnight thereafter in the trial court.

The parties, as well as the court below, shall act on the written communication of the learned advocates for the parties, accompanied by a server copy of this order, without insisting upon prior production of a certified copy thereof.

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.)

