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C.O. 09 of 2022

**Smt. Indrani Ganguli
Vs
Sri Shyamal Kumar Chatterjee**

Mr. Bhaskar Ghosh, Sr. Adv
Mr. Debabrata Sen,
Mr. Arun Kumar Das,

... For the petitioner.

Mr. Saptangsu Basu, Sr. Adv
Mr. Gaurav Purkayastha,
Mrs. Atasi Sarkar,

... For the opposite party.

While assailing the impugned order dated 1st March, 2021 passed by learned Judge, 10th Bench, City Civil Court, Calcutta in Title Suit No. 1286 of 2016, Mr. Bhaskar Ghosh, learned Senior Advocate appearing for the petitioner submits that there will be no prejudice caused to either of the parties to this case, if the amendment application be heard together with the application for rejection of the plaint under Order 7 Rule 11 CPC.

Admittedly, the suit for declaration and mandatory injunction was filed in the year 2016 by plaintiff being grand daughter of the deceased testatrix against ultimate beneficiary of a Will, being grand son of same testatrix. Without any controversy, the amendment application was filed in March 2021, while application for rejection of the plaint was filed in

February 2017.

The bone of contention between the parties arises out of a Will executed by deceased, Surabala Devi. There is no controversy between the parties, surfaced at the moment with regard to the execution of the Will.

Mr. Ghosh submits that if the amendment application is heard out together with another interlocutory application under Order 7 Rule 11 CPC that will not only kill the time, but would also facilitate the Court to return appropriate decision for the further continuance of the pending proceedings.

Mr. Ghosh further submits that the settled proposition of law is very clear that if any amendment application is filed that should be decided first, prior to returning any decision with regard to the prayer for rejection of the plaint.

Mr. Saptangshu Base, learned Senior Advocate appearing for the opposite party/ defendant advertizing to the copy of the Will, annexed with the instant revisional application, submits that as per last wish of the testatrix, defendant, Shyamal Kumar Chatterjee is the ultimate beneficiary of the properties bequeathed by the testatrix.

According to Mr. Basu, it would be rather relevant here to refer the relevant portion of the Will, which may be set out as follows:

“.....after the death of my said two sons and

daughters in law, my only grand son Shyamal Kumar Chattopadhyay shall get all my properties both movable and immovable with absolute right.”

Taking recourse to such disposition of the testatrix, Mr. Basu submits that in view of such clear disposition of the properties of testatrix, there could not be any litigation allowed to be continued anymore, even upon manufacturing a fictitious cause of action.

Thus according to Mr. Basu, the pending litigation may not be allowed to be proceeded further for want of cause of action, vide the last testamentary disposition of the testatrix, referred hereinabove.

With regard to the proposed amendment, Mr. Basu submits that schedule of the proposed amendment has got no reasonable nexus with the cause of action of the instant suit.

The attention of the court is drawn to order dated 21st September, 2022 passed in C.O. 2118 of 2022, by Mr. Basu, to submit that there has already been direction passed by this court to ensure expeditious disposal of an interlocutory application under Order 7 Rule 10 together with Order 7 Rule 11 C.P.C., which has already been scheduled on 9th November, 2022.

Upon referring such submission Mr. Basu strenuously argues that the belated filing of the amendment application would not ipso facto give an automatic right to the plaintiff to claim any precedence

of hearing of amendment application, prior to the decision of a prayer for rejection of the plaint.

Since there has already been delay caused to the life of the pending litigation, the purpose of the belated filing of amendment application is to cause further delay to the suit.

Having considered the submission of both sides, it appears that the execution of the Will is not under challenge by any of the parties to this case.

The fight between the parties is with regard to which of the two applications should be heard out first. True it is that there has been a direction passed in C.O. 2118 of 2022 to ensure expeditious disposal of an application under Order 7 Rule 10 together with Order 7 Rule 11 of C.P.C., which is learnt to have been scheduled on 9th November, 2022.

In a situation like this and for the peculiarity of the circumstances involved in this case, as disclosed in the submission of both the parties to this case, it would sub-serve the purpose of justice, if the application for rejection of plaint is heard together with amendment application under Order 6 Rule 17 C.P.C.

Since date has already been fixed (9.11.2022) for hearing of rejection of the plaint, the Court below may feel free to take up the amendment application along with application for rejection of the plaint.

It is further clarified that if for any reasons

whatsoever, the application for rejection of the plaint together with the amendment application could not be taken up for hearing, both the applications may be peremptorily heard together before the 1st week of December 2022.

While endeavouring such exercise, the Court below must consider all the points, to be raised by both the parties to case, and return the decision in accordance with law, after resolving the points to be raised by the parties to this case.

Petitioner is directed to make communication of this order to the learned court below.

With this observation and direction, the revisional application stands disposed of.

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

(Subhasis Dasgupta, J)