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C.O. 52 of 2022
Sri Manas Kumar Das
Vs
Sri Somenath Kusari & Ors

Mr. Kumarijyoti Tewari, ... For the petitioner.
Mr. Prantick Ghosh,
Mr. Aniruddha Tewari,

Mr. Sounak Bhattacharya,
Mr. Raghunath Das. ... For the Opposite Party.

The petitioner/defendant No. 1 is highly aggrieved with the order impugned allowing amendment.

By the order dated 16th December, 2021, learned Civil Judge (Senior Division), 6th Court, Alipore in T.S. 544 of 2019, allowed amendment on the prayer of the plaintiffs/opposite parties.

After the amendment being allowed, petitioner favoured with the opportunity to file additional written statement to controvert the materials surfaced against the petitioner/defendant.

A deed of gift was executed in the name of defendant No.1 by the aunt of the plaintiff. Admittedly, defendant No.1 is a stranger having no relationship with the donor of the deed. The donor already left this world on 25.01.2019. The present suit for setting aside the deed of gift together with consequential reliefs, was filed by the

plaintiff/nephew of the donor of gift deed on 21.06.2019.

By the proposed schedule of amendment, recovery of possession has been prayed for incidental to the declaration of cancellation of the deed of gift together with the incorporation of some facts pertaining to the medical papers of the deceased donor.

Mr. Kumarjyoti Tewari, learned advocate appearing for the petitioner submits that the proposed amendment will necessarily lead to a change of nature and character of the suit, and the proposed amendment will also hit the maintainability of the suit.

Per contra, Mr Sounak Bhattacharya, learned advocate appearing for the plaintiffs/opposite parties strongly disputes with the submission advanced by the learned advocate for the petitioner, and submits that the petitioner is very much authorized to seek for recovery of possession, incidental to the declaration of cancellation of deed of gift, together with other consequential reliefs, and the proposed limitation would not be attracted in this case, touching the maintainability of the suit.

Defendant No. 1 was favoured with the gift deed dated 04.01.2018, executed by the aunt of the plaintiffs. The donor aunt left this world on

25.01.2019.

Upon perusal of the impugned order, it appears that the probable defence of petitioner has been taken care of by the Court below permitting the defendant No. 1 to file the additional written statement in response to the proposed amendment.

As regards the maintainability point raised in this case, the same is left to be decided by the Court below at the time of filing hearing of the suit.

Petitioner is given liberty to agitate the issue before the Court below at the appropriate time of trial.

The revisional application, thus, does not call for any interference, and accordingly stands disposed of.

There shall be no order as to costs.

(Subhasis Dasgupta, J)