

16.06.2022
Item No.179
Ct. No.7
CHC
(disposed of)

C.O. 187 of 2020

**Abha Mondal
Vs.
Sri Dulal Mondal & anr.**

Mr. Gopal Chandra Ghosh,
Mr. Rajkrishna Mondal,
Ms. Jayita K. Mitra
...for the petitioner

Mrs. Shohini Chakraborty,
Ms. Prajaaini Das
...for the opposite party no.1

The subject-matter of challenge in this revisional application is against the order dated 19th September, 2019, passed by learned Civil Judge (Senior Division), 4th Court, at Alipore, in Title Suit No.111 of 1992, rejecting the prayer for amendment.

Admittedly, this a partition suit, which was instituted by the opposite parties against the petitioner claiming distribution of shares with regard to 'A' and 'B' Schedule property, mentioned in the schedule of partition suit.

The trial court after holding trial granted decree in partition suit in preliminary form declaring share of the co-sharers involved in the suit.

The decision rendered by the trial court was carried in appeal vide Title Appeal No.216 of 2000 of

learned Additional District Judge, 6th Court, Alipore. The Appellant Court remanded the suit back on remand to the trial court for decision afresh in the suit, after allowing the proposed amendment of written statement, filed by the petitioner, thereby giving liberty to adduce additional evidence under Order 41 Rule 27 C.P.C. on the prayer of the petitioner/appellant. A direction was there by the appellate court, as regards filing of the amended written statement by the petitioner before the trial court by 20th February, 2013.

Mr. Ghosh, learned advocate for the petitioner upon referring such facts, submits that while advancing the prayer for proposed amendment, there had been some inadvertent mistakes in the schedule of proposed amendment. The mistakes in the proposed schedule of amendment, according to learned advocate for the petitioner, could be detected subsequently, and a necessity then arose to seek for further amendment of the proposed amendment, already allowed by the appellate court.

It is submitted by the learned advocate for the petitioner that by the proposed amendment, there will be no change in the nature and character of the suit, and since the partition suit has been decided by the trial court upon making erroneous distribution of shares, which has been rightly considered by the

appellate court in its true perspective, and send back the suit on remand for trial afresh permitting petitioner to adduce additional evidence, the proposed amendment ought to have been allowed by the court below.

The proposed amendment would facilitate the court in making appropriate adjudication of the shares of the co-sharers involved in the pending partition suit, learned advocate for the petitioner argues.

Per contra, Mrs. Chakraborty, learned advocate appearing for the opposite party no.1 submits that despite the opportunity being granted by the appellate court directing the petitioner to file amended written statement, the petitioner ought to have been more vigilant, while filing the amended copy of written statement. The grounds set out for the proposed amendment are not acceptable, so as to consider the favourably, Mrs. Chakraborty submits.

Reliance is placed on an unreported decision by Mrs. Chakraborty, rendered in C.O.873 of 2011 by a coordinate Bench of this Court, that the prayer for proposed amendment was not accepted in the referred case for the grounds set out therein, which are similar and akin to the grounds, mentioned in the prayer for proposed amendment.

It is thus contended by Mrs. Chakraborty that without taking much care and caution, the opportunity to file amended copy of written statement has been misused by the petitioner, and which has been sought to be corrected taking the ground of inadvertent mistakes committed, while making prayer for amendment before the first lower appellate court.

It is also contended by Mrs. Chakraborty that that there has been several amendments earlier, and piecemeal amendment should not be allowed, and it is always discouraged in several decisions rendered by Apex Court.

Upon perusal of the proposed schedule of amendment, it appears that though the facts sought to be incorporated could have been incorporated in the additional written statement much earlier with exercise of due diligence, but the proposed schedule of amendment would not, however, change the nature and character of the pending partition suit in any way whatsoever.

Since, it is a partition suit, wherein lawful shares of the co-sharers are liable to be declared taking into the facts surfaced in the pending litigation, consideration of proposed amendment was necessary. More so, the prayer for additional evidence having been allowed by the appellate court, for the fair adjudication

of the matter in controversy between the parties, the proposed amendment, though made belatedly taking the ground of inadvertent mistake but the same should have been allowed with some costs to compensate the harassment and hardship, already caused to the opposite parties.

The order impugned, is, thus set aside. The proposed amendment is allowed with a cost of Rs.20,000/- (Rupees Twenty Thousand) to be paid by the petitioner to opposite parties within three (03) weeks from the date of this order.

Petitioner is directed to file amended copy of the written statement within three (03) days after depositing the costs to the opposite parties.

The court below upon receiving the amended copy of the written statement may frame an additional issue, if needed, to determine the share of the parties involved in the partition suit.

It is, however, clarified that the opposite parties would have every right to controvert the contents of the amendment of written statement undertaking required cross-examination of the witnesses, or evidence if adduced, under the behest of order under Order 41 Rule 27 C.P.C.

As the partition suit is pending since 1992, this Court reposes trust and confidence upon the trial

court that direction passed by the first lower appellate court upon the trial court to ensure expeditious disposal of suit, may be duly regarded to, and the logical conclusion of the suit may be reached in an expeditious manner, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

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

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)