

06.04.2022
Item No.6
Ct. No.7
CHC
(disposed of)

**C.O.219 of 2022
(Physical Hearing)**

**Sri Manoj Kumar Ray
Vs.
Sri Ashok Kumar Roy**

Mr. Aniruddha Chatterjee,
Mr. Animesh Paul
...for the petitioner

Mr. Saptangshu Basu, Sr. Advocate
Ms. Mrinalini Majumdar
...for the opposite party

The impugned order dated 20th January, 2022, passed by learned Civil Judge (Junior Division), 1st Court, Howrah in Title Suit No.1027 of 2021 allowing amendment is subject of challenge in this revisional application.

Mr. Chatterjee, learned advocate appearing for the petitioner/defendant upon resorting to Article 58 of the Limitation Act submits that despite raising objection in terms of the limitation law, the learned court below has allowed the amendment without returning any decision on the point of limitation so far raised, which is contrary to law.

It is also submitted by Mr. Chatterjee that by reason of such amendment being allowed, the nature and character of suit, has already been changed, and as such the amendment should not have been allowed.

Mr. Basu, learned Senior Advocate appearing for the opposite party/plaintiff submits that upon perusal of some materials, disclosed in the written statement, the necessity to seek for amendment arose, and it was so done simply to prevent the multiplicity of litigations.

In reply to the points raised in this case, Mr. Basu further submits that Article 58 of the Limitation Act will not find its scope to apply in the facts and circumstances of the case, and the date of gathering knowledge should be taken into account, while challenging the limitation, so far raised in this case.

Upon perusal of the impugned order, it appears that learned trial court has proceeded to dispose of the amendment application without returning any finding with respect to the limitation, so far raised by petitioner/defendant in this case.

By the proposed amendment, two deeds dated 24th July, 2003 and 6th August, 2021 have been challenged in the present litigation, and declaration has been sought for with respect to such deeds. Basically, it was simpliciter suit for injunction, which has been sought to be converted into a declaration together with injunction, by the proposed amendment in view of the disclosure in the written statement, filed by the petitioner/defendant.

Mr. Basu strenuously argues that the argument so far raised by Mr. Chatterjee is not sustainable in view

of the provisions available under Article 59 of the Limitation Act.

Though the learned court below has allowed the amendment with specific observation that the proposed amendment is formal and technical in nature, and it will not cause any change in respect of the nature and character of the suit, but no finding has been returned with respect to the limitation so far raised in this case, what is conspicuously disclosed in the written objection filed by the petitioner/defendant.

That being the position, the impugned order is not sustainable. The impugned order is thus set aside.

Learned court below is directed to hear out the amendment application afresh in Title Suit No.1027 of 2021 of learned Civil Judge (Junior Division), 1st Court, Howrah providing sufficient opportunity of hearing to both the parties to this case, within twelve (12) weeks from the date of communication of this order.

With this direction/observation 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.)