

07.03.2022  
Item No.05  
Court No.18  
AJ.

**C.O. 218 of 2018**

**I.A. No. C.A.N. 3 of 2018 (C.A.N. 4390 of 2018)**

**C.A.N. 4 of 2018 (C.A.N. 4426 of 2018)**

**C.A.N. 5 of 2018 (C.A.N. 7103 of 2018)**

(applications are not in file)

**Goutam Ghosh & Ors.**

**-Vs-**

**Moni Mohan Ghosh, since deceased,  
his heirs and legal representatives  
Smt. Bani Sikha Sadhukhan & Ors.**

Mr. Sounak Bhattacharya,  
....for the petitioners.

Mr. Buddhadeb Ghosal,  
Mr. Sukumar Ghosh,  
Mr. Sandip Ghosh,  
Mrs. Moumita Ghosh,  
.....for the respondent nos.1  
to 5, 7, 8, 10 & 11.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiffs in a suit for partition and is directed against the order dated December 12, 2017 passed by the 1<sup>st</sup> Court of the learned Civil Judge (Junior Division), Howrah in the said suit being Title Suit No. 145 of 1989.

The suit was once decreed ex parte but was restored on the prayer of the defendants/opposite parties subject to payment of costs of Rs. 4,000/-.

The petitioners in the suit filed an application under Section 151 of the Code of Civil Procedure for recalling of the order restoring the suit on the allegation that the said costs of Rs. 4,000/- has not been paid.

The petitioners also filed an application under Order VI Rule 17 of the Code seeking amendment of the plaint.

The learned Trial Judge by the order impugned has dismissed both the applications. The application under Section 151 of the Code of Civil Procedure was dismissed on the ground that the costs if not paid, would be awarded in the decree.

Mr. Buddhadeb Ghosal, leaned senior advocate appearing on behalf of the opposite parties submits that the defendants had deposited the said costs under a challan on July 16, 2013. He files a photocopy of the said challan, which is taken on record.

In view of the deposit of the said costs, the order rejecting the said application under Section 151 of the Code need not be interfered with.

The learned Trial Judge by the second part of the order impugned has dismissed the application filed by the petitioners seeking amendment of plaint by a completely unreasoned order.

It appears from the schedule of the proposed amendment appended to the application for amendment that some of the amendments sought for viz. the amendments mentioned under paragraph no. 4(a) to 4(d) of the schedule of amendment, if allowed, would not change the nature and character of the suit, on the contrary the said amendments, prima facie, appears to be necessary for the effective adjudication of the suit.

In view of the nature of the suit, prayer for an order of mandatory injunction is misconceived, as such, prayer for amendment of the plaint to incorporate the said prayer and facts incidental thereto cannot be allowed, therefore, except the facts mentioned under Paragraph no. 4(a) to 4(d), the rest of the amendments mentioned under the schedule of the proposed amendment are rejected.

The petitioners are required to file amended plaint within two weeks from date. The defendants are at liberty to file additional written statement to the amended plaint within 14 days from the date of receipt of the copy of the amended plaint.

C.O. 218 of 2018 is allowed in part with the above terms without any order as to costs.

Mr. Sounak Bhattacharya, learned advocate appearing on behalf of the petitioners submits that the applications appearing in the list are all disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

**(Biswajit Basu, J.)**