

11.11.2022
Court No.12
Item no.33
B.M.J.R

C.O 295 of 2019

**Sibnath Chatterjee
Vs.
Sankar Talukdar & Ors.**

Mr. Rajdeep Bhattacharya
.... For the petitioner
Mr. Kaushik De
.... For the opposite parties

Learned advocate for the revisionist and learned advocate for the opposite parties are present.

The present revisional application is now taken up for hearing.

Heard learned advocate for the petitioner and the opposite parties at length. Perused the certified copy of the impugned order as well as the photocopy of the application for amendment and the photocopy of the plaint as filed in Title Suit No.43 of 2014 before the learned trial Court.

On perusal of the certified copy of the impugned order, it reveals that learned trial Court basically dismisses the plaintiff's application under Order VI Rule 17 of the C.P.C on the ground that trial of the said suit has already been commenced and the plaintiff has miserably failed to prove that in spite of due diligence, he

could not have raised the matter before the commencement of trial.

On perusal of the plaint as well as the petition for amendment as filed in Title Suit No.43 of 2014 before the learned trial Court it reveals that by way of proposed amendment the plaintiff has made an endeavour to substitute one prayer and at the same time to incorporate/insert a new prayer in his plaint. It reveals, however, that the proposed amendment relates to title of the suit property which, according to the plaintiff, he has obtained by way of probated Will of one Haraprasad Kanjilal, vis-a-vis the defendant has claimed his title on the basis of an alleged deed of gift executed by said Haraparasad Kanjilal.

After considering the entire materials as placed before this Court, this Court is of the considered view that the amendment, if allowed, would not change the nature and character of the suit and such amendment is very much necessary for the effective adjudication of dispute as involved in the suit.

In view of such, the instant revisional application is allowed. The impugned order no.36 dated 17.12.2018 as passed in Title Suit No.1106 of 2016 by the learned Civil Judge, 3rd Court, Alipore is hereby set aside. Consequently, the petition for amendment as filed by the present petitioner/plaintiff in Title Suit No.43 of 2014 is

hereby allowed. Petitioner/plaintiff is hereby directed to file amended plaint before the learned trial Court within two weeks from the date of communication of this order after serving copies of the same to the defendants and/or to their learned advocates of the said Suit. Learned trial Court is hereby directed to give opportunity to the defendant of the said Suit to file their additional written statement, if therebe any.

Since the suit is of the year 2014, learned trial Court is hereby directed to expedite the suit and he shall make an endeavour to dispose of the suit preferably within a year from the date of communication of this order without granting any unnecessary adjournments to either of the parties.

(Partha Sarathi Sen, J.)