

07.06.2022
Item No.3
Ct. No.7
CHC

C.O.353 of 2020

Mr. Ratanlal Agarwal
Vs.
Smt. Saroj Devi Hussarwala & ors.

Mr. Supratim Laha,
Mr. Bikash Shaw
...for the petitioner

Mr. Arijit Bardhan,
Ms. Deblina Chattaraj
...for the opposite party nos.2 and 3

By a common order dated 5th December, 2019, learned Civil Judge (Senior Division), at Purulia, in Title Suit No.72 of 2017 has disposed of as many as three applications including an application for amendment under Order 6 Rule 17 C.P.C.

Mr. Supratim Laha, learned advocate appearing for the petitioner at the very onset candidly submits that though by a common order three applications have been disposed of including the rejection of prayer for amendment, but his submission would be purely restricted against the rejection of the prayer for amendment, and no other matters.

Mr. Laha, learned advocate appearing for the petitioner submits that the court below has erroneously rejected the prayer for amendment in a

case, when there has been no commencement of the trial.

It is the case of the petitioner that in a suit for partition, pending before the court below, after filing of written statement, the prayer for proposed amendment was made for having incorporated some facts pertaining to execution of a Will by the deceased father of the petitioner bequeathing suit properties in favour of the petitioner. As the petitioner gathered knowledge about existence of the Will only in the year 2018, and immediately upon knowing such facts, a necessity then arose to file an application for the proposed amendment of the written statement.

It is contended by the learned advocate for the petitioner that the learned court below has rejected the prayer for amendment under an hypothetical approach bearing in mind the pendency of a probate proceeding pertaining to the Will under reference, which is contrary to law.

Per contra, Mr. Bardhan, learned advocate appearing for the opposite parties/plaintiffs no.2 and 3 submits that the case of the opposite parties is based on inheritance, while the case of the opposite parties is founded on the story of having been favoured with the suit property on the strength of a Will being executed by the deceased father.

Mr. Bardhan strongly disputes with the existence of the Will and denies the same as regards claim of share in the suit property.

Adverting to paragraph-‘11’ of written statement, Mr. Bardhan submits that there has been fair admission, as regards claim of inheritance of the opposite parties in respect of the suit property, and as such, in spite of clear and conspicuous admission of the case of the opposite parties, based on inheritance, the proposed amendment should not be allowed. Supporting the order of the court below, Mr. Bardhan submits that there lies nothing to be interfered with.

Incidentally, Mr. Bardhan proposes for trying both the cases i.e. the instant suit and the probate proceeding analogously, for the fair adjudication of the matter in controversy between the parties.

As regards the proposed analogous trial, the same is not addressed by this Court, and it is left to be decided by appropriate court in connection with appropriate proceeding.

Though there has been clear admission of the claim of inheritance in w.s. as regards the suit property, but merely with the introduction of a story, as regards the alleged claim of share in the suit property, on the strength of Will being executed by the deceased father

of the opposite parties, there would not be any change in the nature and character of suit.

In the event of the proposed amendment of written statement being allowed, the opposite parties could not be treated to be remediless, as the right of cross-examination will be there during trial to controvert such proposed amendment.

More so, the court below is free to frame additional issue on such score, if needed, irrespective of the pendency of the probate proceeding, if there be any.

Since the proposed amendment would not cause any change in the nature and character of the suit, the Court below ought to have allowed the proposed amendment. Though it is proposed at the belated stage, but the same should have decided in affirmative with some compensatory costs.

The prayer for proposed amendment of original written statement, filed on 16th September, 2017, is thus allowed upon setting aside the relevant portion of the order, dated 15th December, 2019, passed in Title Suit No.72 of 2017, rejecting the prayer for amendment of original written statement with costs of Rs.10,000/- (Rupees Ten Thousand) to opposite parties, to be paid by the petitioner within fortnight from the date of communication of this order.

Petitioner is directed to make communication of this order to the court below.

The amended copy of written statement may be furnished before the court below upon deposition of costs within a week thereafter.

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.

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(Subhasis Dasgupta, J.)