

07.03.2022
Ct. 21
D/L 152

C.O. 328 of 2022
(Via Video Conference)

Sri Nirmal Das & Anr.
-Vs-
Smt. Dipti Dey

Mr. Souradipta Banerjee,
Ms. Fatima Hassan,
Ms. Damayanti Kundu,

... for the petitioners

Mr. Debnath Ganguly,
Mr. Aranya Saha,
Ms. Aishwarya Pratitar,
Mr. Supriyo Dutta,

...for the opposite party

Parties are represented by their respective learned lawyers. The revisional application is taken up for hearing.

Heard learned lawyers for the parties.

The present revisional is at the instance of the defendants/petitioners being aggrieved by an order of amendment of plaint of Title Suit No. 760 of 2016 passed by the learned Judge, 10th Bench, City Civil Court at Calcutta on 06.12.2021.

The facts necessary for determination of the present revisional application in gist are that the petitioners and opposite party are three siblings and joint owners of the properties described in

schedule of the plaint where the plaintiff being a married sister had sought partition of the joint properties.

It appears the plaintiff in her original plaint has admitted that the entire A schedule property is under the possession of the defendants who are her brother and unmarried sister except one room situated on the first floor which is under her possession and which she has kept under lock and key as she reside in her own matrimonial home.

By filling the amendment petition she has alleged that during the pendency of the suit she has been dispossessed from the said one room situated on the first floor of the three storied building fully described in the schedule A. The learned Court below vide impugned order has allowed the amendment.

Being aggrieved by the amendment in the plaint the defendants/petitioners have alleged that opposite party had earlier filed an application under Order 26 Rule 9 of C.P.C. for local investigation of the disputed A schedule property, but learned court below was pleased to convert and considered such petition to be one under Order 39 Rule 7 of C.P.C. and allowed the same by

appointing an Advocate Commissioner. Challenging such order dated 12th March 2019 the defendants/present petitioners filed C.O. No. 2368 of 2019. The Hon'ble Co-ordinate Bench of this High Court allowed the said C.O. and set aside the order of local inspection of the disputed A schedule property. On rejection of the application for local inspection the plaintiff came with an application for amendment in order to claim a prime part of the property and set up a false plea of possession of one of the rooms which she never possessed. That alleged dispossession is a concocted story as plaintiff has failed to give specific date when she was dispossessed from the disputed one room situated on the first floor of the A schedule property. Therefore, learned Advocate appearing for the petitioners prays for setting aside the impugned order. Learned Advocate in support of his contention refers to Bhagavatula Gopalakrishnamurthi & Ors vs. Dhulipalla Sreedhara Rao & Anr. reported in 1949 SCC Online Mad 167.

On the other hand learned Advocate appearing for the opposite party submits by way of amendment opposite party wants to bring the facts

which have developed after the institution of the suit and which are not going to change or alter the nature and character of suit or affects the rights of the parties over the suit properties.

Perused both original as well amended copies of plaints. The fact the plaintiff being one of the joint owners of the properties described in the schedule of the plaint has claimed partition and allotment of her 1/3rd share therein. Therefore the question whether the plaintiff was or was not in possession of one of the rooms in the disputed A schedule property is immaterial as she being one of the co-owners of the disputed properties along with her two siblings is entitled to get 1/3rd share and which cannot be denied.

That apart it appears the alleged dispossession having taken place during the pendency of the suit such facts needs to be brought on record. Which portion of the suit properties the plaintiff is entitled will be decided during final decree, if the parties fail to partition their shares by meets and bounds. Therefore, this Court does not find any illegality and irregularity in the impugned order or any reason to interfere with the impugned order passed by the learned Court below.

Accordingly, **C.O. 328 of 2022 is disposed of.**

Connected application, if any, shall stand disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)