

05.08.2022
Item No.12
Ct. No.7
CHC
(disposed of)

C.O.661 of 2022

**Manojit Singh Deo
Vs.
Maheswari Devi & ors.**

Mr. Tarak Nath Halder
...for the petitioner

Mr. Parikshit Basu,
Mr. Rajnil Mukherjee,
Ms. Bidisha Manna
...for the opposite party no.1

The affidavit-of-service furnished by the petitioner
be taken on record.

The subject-matter of challenge is against the
rejection of a prayer for amendment.

Mr. Halder, learned advocate appearing for the
petitioner submits that the court below has
inappropriately exercised its authority, while rejecting
the prayer for amendment, without going into the facts
disclosed in the petition for amendment.

It is contended by Mr. Halder that subsequent
events only have been sought to be incorporated, as
despite knowledge of this injunction order, the suit
property has been transferred to someone making
violation of the provision of law.

The proposed schedule of amendment is brought to
the attention of the Court to support the submission,
advanced by Mr. Halder.

Per contra, Mr. Basu, learned advocate appearing for the opposite party no.1 submits that the notice of injunction application has not been served, and it is not within the knowledge of the opposite party no.1 if any injunction order was granted by the trial court.

It is also contended by the learned advocate for the opposite party no.1 that the proposed amendment will change the nature and character of suit, which is not permissible under the provisions of the law.

Admittedly, injunction application has not yet been disposed of, and opposite parties have filed objection against the injunction granted in this case. Transfer of the suit property during the pendency of the suit, wherein an injunction order has been there, has been sought to be incorporated in the plaint with a consequential prayer for canceling the deed, allegedly executed by the opposite party no.1, pending the litigation before the court below.

Having considered the submission of both sides, and upon viewing the prayer of the proposed schedule of the amendment, it appears that when the petitioner has proposed for bringing subsequent events, held during the pendency of the litigation, the nature and character of the suit will not be changed, as alleged by the opposite party no.1. More so, the trial has not commenced before the court below.

The impugned order dated 5th March, 2022, rejecting the amendment under Order 6 Rule 17 C.P.C. passed in Title Suit No.186 of 2017 of learned Civil Judge (Junior Division), 1st Court, at Sealdah, South 24 Parganas, is hereby set aside.

The proposed amendment be allowed permitting the petitioner to file amended copies of the plaint within fortnight from the date of this order upon supplying a copy of the same to the opposite parties.

Upon accepting the amended copy of the plaint, the court below would permit the opposite parties to file additional written statement within fortnight thereafter. Additional issues, if any, may be framed in context with amended pleadings in accordance with the law.

Parties are directed to communicate this order to the learned court below.

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.

(Subhasis Dasgupta, J.)