

S/L 35
06.12.2022
Court. No. 12
Suwayan

CO 819 of 2019

Nanibala Naskar
Vs.
Prasanta Mondal & Ors.

Mr. Partha Pratim Roy
Mr. Dyutiman Banerjee

...for the petitioner.

Learned Advocate for the plaintiff/petitioner is present.

The affidavit-of-service as filed today be kept with the record.

Despite service the defendants/opposite party Nos. 1, 2 and 3 did not turn up.

In view of such, this Court proposes to dispose of the instant revisional application in absence of defendants/opposite party Nos. 1, 2 and 3.

The instant revisional application is now taken up for hearing.

In support of the instant revisional application learned Advocate for the petitioner draws attention of this Court to the impugned order whereby and whereunder the learned Trial Court has rejected the petition for amendment of plaint as filed by the plaintiffs on 14.10.2018. Attention of this Court is also drawn to copy of the plaint and copy of the written statement as well as the copy of the amendment petition as filed before the Trial Court in Title Suit No. 81 of 2016. It is submitted on behalf of the plaintiff/petitioner that while disposing of the petition for amendment learned Trial Court has

practically gone into the merits of the suit. It is contended further that the learned Trial Court has also failed to visualize that the present plaintiff has come to learn about the alleged deed of sale only after filing of the written statement by defendants before the learned Trial Court. It is thus submitted it is a fit case for allowing the instant revisional application by setting aside the impugned order.

This Court has perused the copy of the plaint, the copy of the written statement, the copy of the petition for amendment and the impugned order.

As rightly pointed out by the learned Advocate for the plaintiff/petitioner that while disposing the petition for amendment, the learned Trial Court has practically gone into the merits of the suit as pending before him. This Court is very much satisfied that the proposed amendment as mentioned in the schedule of the amendment application 04.10.2018 will not change the nature and character of the suit and it has also been established that the plaintiff has come to know about the alleged deed only on filing of written statement by the defendants/opposite parties.

In view of such, the instant revisional application is allowed. The impugned Order No. 28 dated 14.12.2018 as passed in Title Suit No. 81 of 2016 by the learned Civil Judge (Junior Division), 3rd Court, Baruipur, District - South 24 parganas is set aside.

Consequently the amendment petition dated 04.10.2019 as filed by the present plaintiff/petitioner

before the learned Trial Court in Title Suit No. 81 of 2016 stands hereby allowed.

Plaintiff/petitioner is hereby directed to file amended plaint within a fortnight from the date of passing of this order after serving copy of the same to the defendants and/or their learned Advocates. Learned Trial Court is hereby directed give opportunity to the contesting defendants to file their additional written statement, if there be, any.

Accordingly, CO 819 of 2019 is disposed of.

There shall be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)