

18.01.2022
Item No.01
Court No.18
AJ.

C.O. 982 of 2020
(Via Video Conference)
Sherina Yasmin & Ors.
-Vs-
Shibsankar Manna & Ors.

Mr. Aniruddha Chatterjee,
Mr. Kazi Sazzad Alam.
..... for the petitioners.

Mr. Tanmay Chowdhury.
.....for the opposite parties.

The matter although has appeared in the list for 'Extension of Interim Order' but by the consent of the parties, the revisional application is taken up for final disposal.

The instant revisional application under Article 227 of the Constitution of India is at the instance of the defendants/appellants and is directed against the order no.20 dated February 10, 2020 passed by the additional District Judge Chandernagore, District: Hooghly in Title Appeal No. 51 of 2017.

The plaintiff/opposite party in the year 1989 filed a suit for declaration of title, injunction and recovery of possession. The said suit was subsequently transferred from the Court where it was originally filed to the Additional Court of learned Civil Judge (Junior Division) Chandernagore and was renumbered as Title Suit No. 1255 of 2014.

The property involved in the suit is as follows:-

“One room in the ground floor of a three storied building situated on the junction of Tarakeswar Thana Road and Mandir Road measuring about 1.34 decimals out of 7 decimals in Plot no. 893 under Khatian No. 9 and Plot No. 895 under Khatian No. 58, within the Mouza Bhata, within Tarakeswar Municipality, and P.S.- Tarakeswar, District Hooghly, described as schedule property.”

The said suit was decreed on June 09, 2017. The petitioners aggrieved by the said judgment and decree have preferred the connected appeal.

The petitioners in the said appeal filed an application seeking amendment of their written statement.

The Appeal Court below by the order impugned has dismissed the said application.

Mr. Aniruddha Chatterjee, learned advocate for the petitioners submits that there is a complete misdescription of the suit property in the schedule appended to the plaint.

He further submits that suit plot no. 893 belongs to the petitioners, as such, the plaintiff is not entitled to get a decree of recovery of possession in respect of the said plot and to

clarify the position, the proposed amendment is absolutely necessary but the Appeal Court below without appreciating the scope of the said application has dismissed it.

Mr. Tanmay Chowdhury, learned advocate for plaintiff/opposite party, on the other hand, submits that the defendants never questioned the identity of the suit property in course of the trial of the suit, rather at the time of holding local inspection by the Advocate Commissioner appointed by the learned Trial Judge they identified the suit property.

He further submits that the application for amendment has been filed with the sole object to delay the disposal of the pending lis between the parties.

Heard learned advocate for the parties and perused the materials on record.

The petitioners by the proposed amendment is seeking to incorporate a new paragraph in their written statement which runs as follows :-

“10(a) That the Defendant or the added defendant is not posses the suit plot no. 893 of Mouza – Bhata within ambit of Tarakeswar Municipality under P.S. – Tarakeswar, Dist – Hooghly but only with an intention to take privilege or for taking other benefits, intentionally

added the plot no. 893 is the schedule of plaint, but the same has not been possess by the plaintiff or the plaintiff also not entitled to get the recovery of the above mentioned plot in plot no. 893 which is not belongs to the defendant.”

The petitioners by the aforesaid amendment is trying to raise a dispute with regard to the identity of the property on which the suit room is situated.

The petitioners are the purchasers pendente lite.

Two consecutive Commission works were held in course of the trial of the suit, first on February 19, 1989 and second on July 27, 2015. The vendors of the petitioners in the first commission work identified the suit property and the petitioners did the same in the second Commission work.

The suit was filed way back in the year 1989 and during the long pendency of the suit the identity of the suit property was never questioned either by the petitioners or by their vendors.

No explanation has been offered in application for amendment to justify the delay in filing the said application.

The application for amendment is apparently aimed to delay the disposal of the appeal.

The Appeal Court below therefore, has not committed any error in dismissing the said application.

C.O. 982 of 2020 is dismissed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)