

13.06.2022
Item No.17
Court No.18
AJ.

C.O. 865 of 2018

Sri Debaprasad Pal
-Vs-
Sri Sanjay Patra & Anr.

Mr. Debasish Das,
.....for the petitioner.

Mr. Debasish Das, learned advocate appearing on behalf of the petitioner files affidavit of service which is taken on record.

None appears on behalf of the opposite parties in spite of service.

The plaintiff in a suit for declaration of the title and injunction is the petitioner of the present application under Section 227 of the Constitution of India and is directed against Order No. 87 dated November 18, 2017 passed by the learned Civil Judge (Junior Division), Ghatal, District: Paschim Medinipur in the said suit being Title Suit No. 61 of 2014.

The petitioner filed an application for amendment of plaint of the said suit to incorporate the fact that the defendants have demolished the southern portion of 'ka-1' schedule property during the pendency of the suit and have made pakka construction over the said property.

The learned Trial Judge by the order impugned has dismissed the said application holding that similar application of the petitioner was dismissed earlier.

The earlier application of the petitioner was dismissed by the learned Trial Judge vide order dated February 09, 2016 on the ground that the petitioner has failed to disclose the exact date when the defendants carried out the said alleged construction over the suit property. The petitioner in his second application has supplied the date, wanting in the first application.

The learned Trial Judge, therefore, is not justified in dismissing the second application for amendment of the plaint on the ground of dismissal of his first application. That apart, the fact sought to be incorporated by the proposed amendment is necessary for the proper and effective adjudication of the suit in view of its scope and nature as the suit is under Section 44 of the Transfer of Property Act, 1882.

The order impugned, therefore, is set aside. The said application for amendment of plaint is allowed.

The plaintiff is required to file the amended plaint within two weeks from date, the defendants are at liberty to file their additional written statement within two weeks from the date of receipt of the copy of the amended plaint.

C.O. 865 of 2018 is allowed with the above terms 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.)