

13.05.2022
Item No.13
Court No.18
AJ.

C.O. 1056 of 2019

Sri Samir Kumar Dey & Anr.
-Vs-
Smt. Santi Das Naskar & Ors.

Mr. Mahendra Prasad Gupta,
Mr. Ayan Mitra,
Mr. Chandan Mondal,
Ms. Antara Panja.
....for the petitioners.

Mr. Falguni Bandyopadhyay,
Mr. Manosh Ghosh,
Ms. Riya Ballav.
.....for the opposite party nos. 1 to 3.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendants in a suit for eviction of trespassers and is directed against order dated February 13, 2019 passed by the 2nd Additional Court of the learned Civil Judge (Junior Division), Alipore, District 24-Parganas (South) in the said suit being Title Suit No. 1399 of 2017.

The plaintiffs in the suit filed an application seeking amendment of the plaint to incorporate two additional prayers and averments in support of the said prayers.

The defendants objected to the said prayer of the plaintiffs on the ground that the amendment sought for is barred by limitation.

The learned Trial Judge overruling the said objection of the defendants by the order impugned has allowed the said application for

amendment of plaint holding that the issue regarding limitation will be decided at the time of disposal of the suit.

The plaintiffs by the proposed amendment sought to incorporate the following two additional prayers in the plaint:-

“AI) For a Decree of Declaration that all those alleged three Deeds i.e. being No – 325 of 1999 so called executed in favour of Gayan Chand Saluja, being No. – 5874 of 2013 so called executed by Gyan Chand Saluja in favour of Sarbajit Dey & Arunima Dey and another Deed being No – 7140 of 2017, so called executed by Arunima Dey & Gitanjali Dey to the Defendants No. – 1 and 2 are not legal, valid, effective, operative and not binding upon the Plaintiffs.

AII) For a Decree of Declaration that by all those alleged three Deeds being No - 325 of 1999 so called executed in favour of Gyan Chand Saluja, being No – 5874 of 2013 executed by Gyan Chand Saluja in favour of Sarbajit Dey & Arunima Dey and another Deed being No – 7140 of 2017, executed by Arunima Dey & Gitanjali Dey to the Defendants No – 1 and 2, no Right, Title and Interest has been acquired by the Defendants No – 1 and 2 in the Suit Property.”

The plaintiffs in the said application for amendment have alleged that they became aware of the impugned deeds for the first time from the application for injunction filed by the defendants.

The husband of plaintiff no. 1 and father of plaintiff nos. 2 and 3, by a registered deed of conveyance sold the suit property in favour of one Gayan Chand Saluja, the predecessor-in-title of the defendants, the said deed is under challenge

in the prayer “AI” above. The plaintiff nos. 1 and 2 were the witnesses of the said deed, therefore, the plea of the plaintiffs that they became aware of the said deed only when the defendants disclosed about the said documents in their application for injunction is not believable.

The limitation, being a mixed question of law and fact, prayer for amendment of pleadings generally should not be refused on the ground of limitation unless the bar of limitation is apparent from the record.

In terms of Article 58 of the Limitation Act, 1963, the plaintiffs are required to seek the decrees of declaration, sought to be added by the proposed amendment, within three years from the date when their right to sue first accrued.

The plaintiff nos. 1 and 2 being the witnesses to the impugned deed executed in the year 1999, right to challenge the said deed accrued to them first on the date of execution of the said deed, as such, challenge to the said deed should have been made by them within three years from the said date but same has been done after the expiry of the said period of limitation in the year 2018, as such, the prayer “AI” being expressly barred by limitation cannot be allowed.

The plaintiffs by the proposed new prayer “AII” are seeking to challenge the deed of sale

through which the defendants are tracing their title over the suit property, the said prayer is consequential to the prayer "AI" as such cannot be allowed also.

The order impugned for the aforesaid reason is not sustainable and is accordingly set aside.

C.O. 1056 of 2019 is allowed 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.)