

S/L 32
02.12.2022
Court. No. 12
Suwayan

CO 1861 of 2019

**Samar Kumar Dey
Vs.
Ranjit Kumar Dey & Ors.**

*Mr. Soumik Ganguli
Ms. Ankita Pradhan*

...for the petitioner.

*Mr. Sandipan Banerjee
Mr. Sobhan Majumder*

...for the opposite parties.

The parties, i.e., the defendant No.1/petitioner and the plaintiffs/opposite parties are represented by their respective learned Advocates.

The instant revisional application is now taken up for hearing.

Heard the learned Advocates for the parties at length. The present case is now taken up passing appropriate order.

The instant revisional application under Article 227 of the Constitution of India arises out of Order No. 28 dated 27.03.2019 as passed by the learned Civil Judge (Junior Division), 2nd Court, Bankura in Title Suit No. 58 of 2017 whereby and whereunder the said Court by the impugned order has been pleased to allow the plaintiff's application for amendment of plaint on payment of cost of Rs. 500/- to be paid by the plaintiffs to the defendant. The defendant No. 1 felt aggrieved and, thus, preferred the instant revisional application.

In support of the instant revisional application learned Advocate for the revisionist/defendant No.1 at the

very outset draws attention of this Court to the impugned order. Attention of this Court is also drawn to a photocopy of the amendment petition which has been annexed with the petition for revision with the mark P-4. It is contended that learned Trial while disposing of the petition for amendment as filed by the plaintiff mechanically allowed the said petition without assigning any reason therefor. It is further argued that by way of proposed amendment the plaintiffs have made an attempt to incorporate certain facts which are contrary to the exchange deed which according to the present revisionist was never acted upon. It is, thus, argued that the impugned order as passed by the learned Trial Court is not justifiable in the eye of law and the same may be set aside.

While opposing such contention learned Advocate for the plaintiffs/opposite parties also placed his reliance upon the impugned order. It is contended that while passing the impugned order learned Trial Court has assigned sufficient reason for allowing the same and for which no prejudice is caused to the present petitioner since the present petitioner being defendant No. 1 has been given opportunity to file his additional written statement to controvert the averments as sought to be incorporated by way of amendment of plaint.

This Court has perused the entire materials as placed before this Court including the impugned order. This Court has given its anxious consideration over the submissions of the learned Advocate for the both sides.

On conjoint perusal of photocopy of the petition for amendment as filed before the learned Trial Court and the impugned order, it reveals to this Court that by way of amendment the plaintiffs have intended to incorporate certain facts to substantiate their right, title and interest over the suit property.

This Court further considers that the amendment as sought for does not tantamount to evidence and the present petitioner being defendant No. 1 shall have every right and liberty to controvert such averments by filing their additional written statement which the learned Trial Court while passing the impugned order has given to the defendant No. 1.

This Court, thus, considers that no much prejudice is caused to the present petitioner/defendant No. 1 with the passing of the impugned order by the learned Trial Court.

This Court, thus, finds no merit in the instant revisional application and accordingly CO 1861 of 2019 is dismissed on contest.

The impugned Order No. 28 dated 27.03.2019 as passed by the learned Civil Judge (Junior Division), 2nd Court, Bankura in Title Suit No. 58 of 2017 is hereby affirmed.

Liberty is given to the present petitioner/defendant No. 1 to file his additional written statement before the learned Trial Court positively within 6 weeks from the date of passing of this order. Learned Trial Court is hereby requested to expedite the trial of Title Suit No. 58

of 2017 without granting any unnecessary adjournments to either of the parties.

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.)