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14.02.2022
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

(Via Video Conference)

CO No. 2508 of 2019

Maheshwari Devi alias Singh

-versus-

Smt. Shankuntala Sharma & ors.

Mr. Anurag Bagaria,
Mr. K. Thaker,

... for the petitioner.

The petitioner of the present revisional application under Article 227 of the Constitution of India is the defendant no. 1 of the Title Suit No. 618 of 2006 pending before the 4th Bench of learned Judge, City Civil Court at Calcutta.

The revisional application is directed against the order no. 96 dated June 27, 2019 whereby the learned Trial Judge has allowed the application filed by the plaintiffs/opposite parties seeking amendment of the plaint in part.

Learned advocate appearing for the petitioner argues that the suit was initially filed for setting aside of an ex-parte decree which by the proposed amendment has been sought to be converted into a suit for eviction, the provision of Order VI Rule 17 of the Code of Civil Procedure cannot be resorted to for changing the character of the suit.

He further argues that the suit has been posted for peremptory hearing, therefore, the amendment sought for is hit by the restriction under the proviso appended to Order VI Rule 17 of the Code in seeking

amendment of pleadings after commencement of trial of the suit.

Having heard the learned advocate for the petitioner and on the perusal of records, it appears that the plaintiffs are not in possession of the suit property as such, a suit for declaration simplicitor would not afford them complete relief, on the contrary, failure to seek a decree for recovery of possession of the suit property may result in dismissal of the suit under the proviso appended to Section 34 of the Specific Relief Act, 1963.

Under such circumstances, the plaintiffs thought it expedient to amend the plaint to cure the said defect. The relief sought for is not barred by limitation, as such, incorporation of a prayer for a decree of recovery of possession of the suit property in the plaint being incidental to the relief of declaration sought for in the suit, if allowed, would not change the nature and character of the suit.

Trial of the suit envisaged under the proviso appended to Order VI Rule 17 of the Code commenced not on mere fixing a date for tendering evidence-in-chief by the plaintiffs. To constitute commencement of trial of the suit, something more is required, such as when first witness proves his evidence-in-chief or seeks to prove document to be tendered in evidence.

Record reveals that learned Trial Judge had fixed dates for tendering evidence-in-chief by the plaintiffs but no such evidence has yet been filed far less tendered, therefore, trial of the suit, as submitted by the learned advocate for the petitioner has not yet

commenced, in view of such position, the restriction under proviso appended to Order VI Rule 17 of the Code cannot be fetter to the power of the learned Trial Judge to allow the said application for amendment of plaint.

The revisional application, for the aforesaid reasons fails, C.O. 2508 of 2019 is dismissed without any order as to costs.

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

(Biswajit Basu, J.)