

12.12.2022
Item No.2
Ct. No.7
CHC
(disposed of)

C.O.2203 of 2022

Sri Madan Jana & ors.
Vs.
Hara Prasad Jana & ors.

Mr. Sankar Nath Mukherjee,
Mr. Niraj Gupta
...for the petitioners

Mr. Sounak Bhattacharya
...for the opposite parties

Affidavit-of-service furnished by the petitioners be
taken on record.

The subject-matter of challenge in this revisional
application is against an order of amendment being
allowed in part by learned Civil Judge (Junior
Division), 3rd Court, Tamluk, Purba Medinipur, in Title
Suit No.09 of 2020.

While assailing the impugned order, Mr.
Mukherjee, submits that the court below has not
appropriately gone into the proposed schedule of
amendment, and has mechanically allowed the
amendment in part, thereby declining to allow the
proposed amendment, so far as the principal part is
concerned in the schedule of proposed amendment.

Adverting to the prayer of the suit, Mr. Mukherjee
submits that declaration has been proposed in respect

of schedule property, which the plaintiffs have inherited from their predecessor.

Admittedly, plaintiffs inherited their property from their father Satish Jana, who claimed his half share in respect of some properties disclosed in the schedule.

It is submitted that the defence put up by the opposite parties, as disclosed in the written statement would dislodge the plaintiffs from the case made out in the pleadings, submitted by the plaintiffs.

It is further submitted that there has been reference of some deeds, disclosed in the written statement, which if not challenged, would affect the title of the plaintiffs. Though the plaintiffs have inherited the suit property from their predecessor but their may be some unforeseen difficulties in obtaining proposed declaration from the court below, and for which rests of schedule of amendment, other than point no.1 being allowed, are necessary.

Mr. Bhattacharya, learned advocate appearing for the defendants submits that there has been sufficient disclosure made in paragraphs-31, 34 and 35 of written statement with regard to availability of extent of right of inheritance of the plaintiffs, allegedly claimed in the suit property.

According to Mr. Bhattacharya, there has been a previous rejection of a dispute case, before Settlement Authority made by the predecessor of the plaintiffs and

subsequently, there has been no appeal preferred, and as a result of which, the rejection of the dispute case of settlement record of right may not be allowed to be reopened, permitting the proposed amendment. More so, there has been a compromise decree entered in Title Suit No.35 of 1981 of learned Civil Judge (Junior Division), 3rd Court, Tamluk, wherein unequivocal admission of the predecessor of plaintiffs was disclosed, which may not be allowed to be challenged by the proposed amendment being a bar under Order 23 Rule 3A of C.P.C. More so, the proposed amendment is not permissible after the commencement of the trial, which would be evident from the order dated 2nd April, 2022, Mr. Bhattacharya argues.

Since there has been no explanation offered regarding the delay as to proposed amendment, the proviso appended to Order 6 Rule 17 C.P.C. would be very much applicable in the facts and circumstances of the case.

Having considered the submission of both sides, it appears that partial amendment being allowed is the bone of contention between the parties. The court has already allowed amendment with respect to schedule 1 of the proposed amendment, which would not affect the nature and character of the suit, thereby declining

to allow rests of the points disclosed in the schedule of proposed amendment.

Upon perusal of the defence, disclosed in paragraph 31 to 38 of the written statement, it appears that there has been a settlement dispute case, registered by the predecessor of the plaintiffs, which was rejected. No appeal was there after preferred challenging the rejection of the dispute case. The purpose of raising dispute before the settlement authority is to correct the record of right in terms of their existing position, though the document conveying title reflected otherwise.

There has been a compromise decree reached by the predecessor of the plaintiffs in a previous round of litigation with their other cosharers in the suit property, when there has been unequivocal admission disclosed. The proposed amendment is intended to disturb the finality of such decisions, as mentioned hereinabove, which should not be allowed to be raised by the proposed amendment as this Court cannot be oblivious of the provisions incorporated under Order 23 Rule 3A of the C.P.C.

For the reasons disclosed hereinabove, there is hardly any scope for interference. The revisional application stands disposed of.

However, this would not prevent the petitioners to produce their documents of title and possession, if

there be any, during the trial so as to challenge the case, to be raised by the defendants during trial, apart from making cross-examination of the witnesses, to be examined by the defendants during the trial

With this observation/direction, the revisional application stands disposed of.

Parties are directed to make communication of this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)