

(03)
18.01.2022
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

(Via Video Conference)

CO No. 2130 of 2021

Susanta Naskar @ Susanta Kumar Naskar & anr.

-versus-

Sri Subir @ Sarajit Naskar & anr.

Mr. Debjit Mukherjee,

... for the petitioners.

Mr. Rabindra Nath Pal,

Mr. Saunak Bhattacharya,

... for the opposite party no. 1.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant nos. 1 and 2 in a suit for declaration of title and recovery of possession which is directed against the order dated September 28, 2021 passed by the 5th Court of learned Civil Judge (Junior Division) at Howrah in the said suit.

The learned Trial Judge is hearing two suits being Title Suit No. 58 of 2010 and Title Suit No. 71 of 2008 analogously.

The learned Trial Judge by the order impugned has allowed an application for amendment of the plaint.

Mr. Debjit Mukherjee, learned Counsel appearing on behalf of the petitioners, submits that the trial of the suit has commenced but the application for amendment has been allowed holding that by the proposed amendment the plaintiff is seeking to incorporate the events happened subsequent to the commencement of trial of the suit. He submits that at least the events mentioned under paragraph I of the schedule of proposed amendment are not events occurred subsequent to the commencement of the trial of the suit.

Responding to the said argument of Mr. Mukherjee, Mr. Rabindra Nath Pal, learned Counsel appearing on behalf of the

plaintiff/opposite party no. 1 along with Mr. Saunak Bhattacharya, learned advocate, submits that the plaintiff by the statements made under the said paragraph is clarifying his earlier statement made in the plaint, therefore, the learned Trial Judge has not committed any error in allowing the application for amendment as a whole.

Having heard the learned Counsel for the parties and on perusal of the record, it appears that the proposed amendment under paragraph I of the schedule of proposed amendment is hit by the restriction contemplated under the proviso append to Order VI Rule 17 of the Code, as such, cannot be allowed.

C.O. 2130 of 2021 is disposed of by modifying the order impugned to the extent that the prayer of the plaintiff for amendment of the plaint indicated under paragraph I of the schedule of proposed amendment appended to the said application is rejected, the other portion of the order impugned is hereby affirmed.

The defendants shall file their additional written statement to the amended portion of plaint within two weeks from date, if not already filed.

Considering the long pendency of the connected suits, the learned Trial Judge is requested to make all endeavour to dispose of those suits as expeditiously as possible.

There shall be no order as to costs.

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

(Biswajit Basu, J.)