

02.12.2022

DL No. 54

BM

Court No.652

CO 3140 of 2016

Sk. Abdul Rashid

Vs.

Sk. Abu Taher & Ors.

Mr. P. K. Banerjee

Ms. Indrani Nandi

... for the petitioner

Affidavit of service filed by the petitioner is taken on records. Opposite parties are not represented.

Being aggrieved by and dissatisfied with the order no.14 dated 30th May, 2016 passed by the learned Civil Judge, Junior Division, First Court, Hooghly in Title Suit No.10064 of 2014, present revisional application has been preferred.

The petitioner contended that the petitioner as plaintiff filed the aforesaid suit for declaration and permanent injunction against the opposite parties. The plaintiff's case is that the plaintiff's predecessor purchased 'B' Schedule property which is part and parcel of 'A' Schedule property to the plaintiff through registered deed in the year 1943 and since then they are possessing the suit property and their names have been duly recorded in the record of rights. His further case is that the defendants/opposite parties are residing in the South West side of the suit plot

and now they are trying to make construction illegally by encroaching some portion of plaintiff's plot No.438 being the 'B' Schedule property by excavating land. The plaintiff requested the defendants not to make illegal encroachment but as defendant did not pay heed to such request, the plaintiff filed the aforesaid suit against the defendant praying for permanent and mandatory injunction and also for declaration in respect of the suit property. The defendants/opposite parties after receiving the summons appeared in the said suit and filed written statement denying the material allegations. The defendant's specific contention is that they are not encroaching any portion of plaintiff's land and as such they prayed for dismissal of the suit.

During pendency of the suit the plaintiff/petitioner filed an application for amendment of plaint stating that the defendants have encroached 'B' Schedule property which is part and parcel of 'A' Schedule property but in the plaint there is no prayer for recovery of possession and for which proposed amendment is necessary for proper adjudication of the case. Said application for amendment came up for hearing before the court below on 30.5.2016 when the court below was pleased to reject the plaintiff's prayer for amendment on the ground that the proposed

amendment if allowed, will change the nature and character of the suit. Being aggrieved by that order present application has been preferred.

Mr. Banerjee, learned counsel appearing on behalf of the petitioner submits that the court below acted illegally with material irregularity in not allowing the said application for amendment. The proposed amendment, if allowed will not change the nature and character of the suit, neither it will introduce any new relief in the plaint and as such the order impugned is liable to be set aside and the plaint may be allowed to be amended accordingly.

Having considered the submissions made by the learned counsel on behalf of the petitioner and also considering the facts and circumstances of the case, it appears from the copy of the plaint that plaintiff has specifically stated in the plaint that the defendant has encroached 'B' schedule property which is part of 'A' Schedule property and the cause of action of the suit arose on 23.8.2014 when the defendant allegedly started to excavate land encroaching about 1 ½ satak land of the plaintiff which is described in the 'B' Schedule to the plaint.

In the above background, aforesaid rejection of trial court on the ground that if the amendment as sought for in the plaint is allowed, it would amount

to substituting a new plaint with new cause of action, is perverse.

In a suit for declaration, if the plaintiff is able to seek further relief than a mere declaration of title, he must seek such relief. The question of change of nature or character of suit by way of proposed amendment does not arise as even after proposed amendment subject matter for adjudication of suit will remain as to whether defendants have encroached any land of plaintiff or not. Needless to reiterate that dominant purposes of order VI, rule 17 is to minimize litigation. While rejecting the prayer for amendment, court below should have considered whether such refusal would give birth to another litigation in future between self same parties. Technicalities of law should not be permitted to hamper the courts in administration of justice between the parties. If the aforesaid test is applied in the instant case, the amendment sought for could not be declined.

In view of above, the impugned order No.14 dated 30.5.2016 passed in T.S No.10064 of 2014 is hereby set aside.

The court below is directed to amend the plaint as per schedule of amendment petition filed under Order VI Rule 17 and to expedite the trial of the suit.

C.O 3140 of 2016 is accordingly allowed.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)