

S/L 6
26.9.2022
Court No.652
SD

CO 2253 of 2021

Sukdeb Manna & Anr.
Vs.
Santanu Dolui & Ors.

Mr. Krishna Das Poddar
Mr. Sujit Bhunia

...for the Petitioners.

Being aggrieved and dissatisfied with the Order No.20 dated 29.11.2021 passed by the learned Civil Judge (Junior Division), 3rd Court, Sadar at Paschim Medinipur in Title Suit NO.182 of 2019 rejecting thereby the petition for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure, the present revisional application has been preferred by the plaintiffs/petitioners.

The petitioners have contended that the plaintiffs/petitioners filed a suit for declaration and injunction in respect of the suit property described in the 'Ka' schedule to the plaint against the defendants being Title Suit No.182 of 2019.

In the said suit, the plaintiffs/petitioners filed an application under Order 39 Rule 1 and 2 for obtaining temporary injunction and the learned court after hearing the petitioners was pleased to grant ad interim order of status quo in respect of the suit property on 15.3.2019. The defendants after knowing the aforesaid order of injunction most illegally and willfully violating the said order, has made a triple shedded thatched house encroaching a portion of the 'Ka' schedule property on March 20, 2019. As the

plaintiffs/petitioners has made the aforesaid construction absolutely violating the order of injunction encroaching a land measuring about 50 sq.ft. on the 'Ka' schedule property, plaintiffs finding no other alternative filed an application under Order VI Rule 17 of the Code of Civil Procedure on 29.11.2021.

The defendants did not prefer to file written statement in the said suit and for which the suit has already been posted for ex parte hearing. The aforesaid application under Order 6 Rule 17 came up for hearing before the learned court below on 29.11.2021 but the learned court below was pleased to reject the plaintiffs/petitioners' prayer for amendment under Order 6 Rule 17 on the ground that if the prayer for amendment is allowed, it would change the nature and character of the suit and furthermore, the proposed amendment is not at all required to adjudicate the real controversy between the parties.

It has been contended by the learned counsel for the petitioners that the dominant purpose of Order VI Rule 17 is to minimise litigation and as such, the proposed amendment is required to be allowed.

The petitioners in this context have relied upon case law in *Revajeetu Builders and Developers vs. Narayanaswamy & Sons & Ors.* reported in (2009) 10 SCC 84 and also *Ragu Thilak D. John vs. S. Rayappan & Ors.* reported in (2001) 2 SCC 472.

Perused the schedule of amendment and considered. It appears that in view of the aforesaid facts and

circumstances of the case, the proposed amendment is required to be allowed for the purpose of adjudicating the real controversy between the parties. Since the petitioners have contended that the said event had taken place after institution of the suit, so the proposed amendment is also required to be allowed to minimise the litigation. Moreover, if the proposed amendment is allowed defendants will have no cause to prejudice and on the contrary, if the proposed amendment be not allowed, it may lead to multiple litigation.

In view of the above, I find that this is a fit case where the revisional application is required to be allowed.

Accordingly, CO 2253 of 2021 is allowed.

The plaint is amended as per the schedule of the petition for amendment. The plaintiffs are directed to file amended plaint within the period prescribed under Order VI Rule 18 of the Code of Civil Procedure. On filing such amended plaint, plaintiff will serve copy of amended plaint upon the defendants before proceeding further with the suit.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)