

16.02.2022
Ct. 21
D/L 03
ab

C.O. 2297 of 2021
(Via Video Conference)

Mr. Prasanta Dey
-Vs-
Mrs. Santilata Das.

Mr. Rajdeep Bhattacharjee
Mr. T. Dhali ... for the petitioner

Mr. S.Ganguly
...for the opposite party

The petitioner is represented by learned Advocate Mr. Rajdeep Bhattacharjee.

The petitioner files affidavit of service along with postal receipts and track reports showing due service upon other parties.

The opposite party is represented by learned Advocate Mr. S Ganguly.

The revisional application is taken up for hearing.

The present application is at the instance of defendant of Title Suit No. 103 of 2012 renumbered as Title Suit No. 1 of 2018 being aggrieved by an order permitting the plaintiff to amend her plaint by learned Additional District Judge, Durgapur on 25.11.2021.

(A question arise in the mind of this Court how a Court of Additional District Judge could hear an original Title suit for recovery of possession of immovable property when there is already Original Court of Civil Judge (Senior Division) as well as Original Court of Civil Judge (Junior Division) at Durgapur, Pachim Bardhaman, until and unless the matter is specially assigned to

***him by superior court. The cause title of amended
 plaint show the original Title Suit is pending
 before the court of Additional District Judge and
 amendment was not effected in connection of any
 Appeal) Therefore, Learned Additional District
 Judge, 1st Court, Durgapur is directed to send the
 record immediately either to the Court of Civil
 Judge (Senior Division) or (Junior Division)
 Durgapur, who has jurisdiction to try the same.***

Be that as it may, it has been contended that the learned Court below has failed to take into consideration about the facts that the trial has already commenced and there is no mention in the petition that in spite of due diligence matter could not be brought on record. The amendment petition having filed at belated stage and that too changing the nature and character of the disputed property the learned Court below ought not to have allowed the amendment application. If such amendment is allowed to exist then the valuable right which has been accrued in favour of the defendant would be adversely affected.

On the other hand learned Advocate appearing for the opposite party at the very outset contended that present revisional application is not maintainable as petitioner/defendant cannot challenge the impugned order dated 25.11.2021 as petitioner has already acted upon the amended plaint which was filed by the plaintiff after amendment was allowed on 07.12.2021 by filing additional W.S. against the amendment plaint on 14.12.2021. The petitioner/defendant cannot challenge the order granting amendment by filling the present application as he has already waived his right by filing additional W.S against the amended plaint.

Learned Advocate produced the amended copy of plaint dated 07.12.2021 and additional W.S. filed by the present petitioner/defendant on 14.12.2021. The

impugned order appears to have been passed on 25.11.2021. Let those documents be retained with the record.

On perusal of those documents this Court does not find any merit in the present revisional application.

Accordingly, **C.O 2297 of 2021 is dismissed.**

Interim order, if any, stands discharged.

There will be no order as to costs.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Kesang Doma Bhutia, J.)