

16.11.2022
Item No.14
Ct. No.7
CHC
(disposed of)

C.O.2804 of 2022

Abdus Sattar Laskar @ Sattar Laskar & ors.
Vs.
Md. Akbar Ali Laskar & anr.

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal
...for the petitioners

Mr. Soujanya Bandyopadhyay
...for the o.p. no.1

The subject-matter of challenge in this case is against the non acceptance of the additional written statement, filed by the petitioners upon granting leave under Order 8 Rule 9 C.P.C.

Admittedly, this is a suit for declaration, recovery of possession, upon evicting the defendants on proof of better title.

Mr. Bhattacharya, learned advocate appearing for the petitioners, while assailing the impugned order dated 4th August, 2022, passed by learned Civil Judge (Junior Division), 2nd Additional Court, Diamond Harbour, South 24 Parganas, submits that the court below has confused the provision of Order 8 Rule 9 C.P.C. with Order 6 Rule 17 C.P.C.

Admittedly, the written statement was filed by the petitioners in August, 2014 in a suit originally instituted in the year 2010. The instant application for

filing additional written statement was filed on 7th April, 2017.

Upon advertizing to paragraph-‘15’ of the written statement, Mr. Bhattacharya submits that there has been claim of title disclosed by the defendants with respect to the subject property, disclosed in the schedule mentioned in the plaint, and this additional written statement sought to be filed, is nothing but in clarification or explanatory to the defence already set up in the written statement.

Per contra, Mr. Soujanya Bandyopadhyay, learned advocate appearing for the opposite party no.1 disputes with the submission of Mr. Bhattacharya alleging that there has been an attempt undertaken to modify the schedule under the garb of proposed additional written statement, which if allowed, would necessarily change in the schedule by incorporating some non suited plots.

Supporting the order of the court below, learned advocate for the opposite party no.1 submits that there lies nothing to be interfered with the impugned order.

Having considered the submission of both sides, it appears that the court below has declined to grant any leave to file additional written statement, which is in clarification and or explanatory to the defence already set up, pertaining to a claim disclosed in the written statement upon asserting a title to the suit property.

The additional written statement, wherein claim of title has been asserted, is always subject to proof during the trial. There is hardly any chance of causing any modification and correction of the schedule, which has been voluntarily, and deliberately furnished by the plaintiff/opposite party no.1 himself.

As per submission disclosed by both the parties, it appears that the collection of the evidence is at the initial stage, and only the affidavit-in-chief has been tendered.

That being the position, if the additional written statement is allowed to be filed upon granting leave, there may not be any prejudice caused to the opposite party no.1/plaintiff.

For the reasons, as disclosed hereinabove, the impugned order is set aside granting leave to petitioners to file additional written statement, upon supplying a copy well in advance to the opposite parties within ten (10) days from the date of communication of this order to the court below, with a cost of Rs.5,000/- (Rupees Five Thousand only) to the opposite parties.

This would not, however, prevent the court below to frame additional issue, if any, in context with the amended copy of additional written statement.

Amended copy of the additional written statement, may be filed within seven (07) days after the deposition of cost by petitioners to the opposite parties.

Opposite parties/plaintiffs are however, given liberty to adduce evidence in context with the additional written statement, if necessary upon recalling P.W.1, or upon filing supplementary affidavit in chief.

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.)