

S/L 3
22.12.2022
Court. No. 12
Suwayan

CO 3018 of 2022

**Mohiuddin Piyada
Vs.
Abdul Latif Halder & Ors.**

Mr. Sandip Das

...for the petitioner.

*Mr. Sounak Bhattacharya
Mr. Sounak Mondal*

...for the opposite party nos. 1 to 5.

In the instant revisional application Order No. 128 dated 27.07.2022 as passed by learned Civil Judge (Junior Division), 2nd Additional Court, Diamond Harbour in Title Suit No. 83 of 2016 has been assailed. By the impugned order learned Trial Court has been pleased to reject of the plaintiff for amendment of the plaint.

In support of the instant application under Article 227 of the Constitution of India, learned Advocate for the plaintiff/petitioner at the very outset draws attention of this Court to an earlier Order No. 99 dated 19.11.2019 as passed by the self-same Court in the self-same suit. It is argued that after discovery of some title deeds the plaintiff sought for liberty of the learned Trial Court to withdraw the said suit with a rider to file a fresh suit against the defendant which was disallowed by the said Court with a finding that if there be a formal defect in the plaint the same can be cured by way of amendment. It is contended that when the plaintiff approached the learned Trial Court with an amendment petition the same was

turned down by passing the impugned order. It is contended that considering the predicament of the plaintiff in finding the said title deeds and also considering the fact that the proposed amendment shall not change the nature and character of the suit, learned Trial Court ought to have allowed the petition for amendment as prayed for. Learned Advocate for the present petitioner, thus, request this Court to allow the instant revisional application by setting aside the impugned order.

Learned Advocate for the opposite parties/defendants, however, opposes such contention. He also places his reliance upon the previous Order No. 99 dated 19.11.2019 as referred to above. It is contended by him that while rejecting the plaintiff's prayer for withdrawal of suit with a liberty to file afresh against the defendants, learned Trial Court gave no liberty to the present plaintiff/petitioner to file an amendment application with an assurance to allow the same. It is contended by him that learned Trial Court is very much justified in assessing the petition for amendment on its own merit and thus has been pleased to reject the same on cogent ground. According to learned Advocate for the defendants/opposite parties since by way of proposed amendment the plaintiff has made out a new case, learned Trial Court is very much justified in passing the impugned order. On perusal of the entire materials as placed before this Court and after hearing the learned Advocates for the both sides it appears to this Court that

admittedly the plaintiff before the learned Trial Court has approached at a very late stage especially when the trial of the said suit has already commenced. However, considering the fact that in the plaint of the aforesaid suit the plaintiff has prayed for a declaration of his title and for permanent injunction and also considering the fact that by way of proposed amendment the plaintiff has given the details as to how he got title of the suit property, this Court is of considered view that the learned Trial Court ought to have allowed the application for amendment considering the predicament of the plaintiff to find out the title deeds though at latter stage.

In view of the discussion made hereinabove, the instant revisional application is allowed. Consequently the impugned Order No. 128 dated 27.07.2022 as passed by learned Civil Judge (Junior Division), 2nd Additional Court, Diamond Harbour in Title Suit No. 83 of 2016 is hereby allowed. As a result the petition for amendment as filed by the plaintiff on 04.02.2020 in Title Suit No. 83 of 2016 stands hereby allowed on contest subject to payment of cost of Rs.5,000/- which is to be paid by the plaintiff to the defendants within a fortnight from the date of reopening of the Court in the year 2023.

It is made clear that the time limit as fixed by this Court for the payment of cost mandatory. Plaintiff is further directed to file amended plaint also within a fortnight before the learned Trial Court after serving a copy of the same either to the defendants or to the learned Advocate for the defendants. Learned Trial Court

is hereby directed to grant liberty to the defendants to file their additional written statement if there be any within a period of one month from the date of receipt of the copy of the amended plaint.

Liberty is given to defendants/opposite parties to recall the P.W.s before the learned Trial Court to put questions in course of cross-examination regarding the subsequent facts as have been incorporated by way of amendment.

Accordingly, the revisional application being CO 3018 of 2022 is disposed of.

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

(Partha Sarathi Sen, J.)