

6.12.2022  
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Ct. no. 652  
sb

**C.O. 3819 of 2019**

**Uttam Kumar Bhoumik**  
**Vs.**  
**Bikash Bhowmik & Ors.**

Mr. Subrata Santra                   ...for the petitioner

Mr. Sounak Bhattacharya   ...for the opposite party

Being aggrieved and dissatisfied with the order no. 135 dated 7.9.2019 passed by learned Civil Judge (Junior Division), 2<sup>nd</sup> Court, Tamluk in Title Suit no. 2814 of 2014, the present revisional application has been preferred.

The petitioner contended that the petitioner as plaintiff filed aforesaid suit for declaration and permanent injunction against the defendant no. 1 and proforma defendants/opposite parties. According to the plaint case, R.S. and L.R. Dag no. 616 measuring about 63 decimal has been described as Ka schedule in the plaint and out of that 63 decimal Kalipada Dasgupta and Nirapada Dasgupta jointly owned 31 ½ decimal and were possessing respective portion by making mutual partition. After demise of Nirapada Dasgupta, his legal heirs sold out 15 ¾ decimal in favour of the petitioner and his brother, Pritinath Bhowmik by a registered sale deed dated 28.7.2003. Accordingly, their names are recorded

in the record of rights. The petitioner applied for conversion of 8 decimal of land out of 14  $\frac{3}{4}$  decimal from “Jal” into “Bastu” before the concerned BL & LRO and same was granted on 26.5.2011 which is described in Ka-1 Schedule to the plaint and said 8 decimal of land separated as Bata dag no. 616/1784 in the name of petitioner by a Misc. case no. 2/2013. On 28.11.2012, the defendant/opposite party no. 1 forcibly tried to take possession of the Ka/1 schedule of the petitioner. Hence the suit.

The defendant/opposite party appeared and contested the suit. The petitioner states that plaintiff's witness nos. 1 to 5 were examined and their evidences have been closed. As per the direction of the learned court, plaintiff's witness no. 6 brought the entire proceeding to Misc. case no. 2 of 2013. The said record of Misc. case is marked as Exhibit 6 series in the said suit. During cross examination, PW 6 disclosed that after completion of Misc. case no. 2 of 2013 another proceeding was initiated with the said office vide Misc. case no. 182 of 2016. The petitioner further states that on the same date i.e. on 26.4.2017, the defendant/opposite party no. 1 filed an application praying for call for the said particular case record being Misc. case no. 182 of 2016. The said PW 6 also brought the case record of Misc. case 182 of 2016 which is marked as Exhibit A series. The petitioner then filed an application for amendment of plaint under

Order 6 Rule 17 for inserting in the pleading in regard to the proceeding of Misc. Case no. 2 of 2013 and Misc. 182 of 2016 and the said prayer for amendment was allowed and plaintiff was amended accordingly and defendant/opposite party no. 1 had also filed additional written statement. Subsequently, the plaintiff/PW1 filed an application under Order 18 Rule 17 of the Code of Civil Procedure for recalling the PW 1 and also for tendering additional examination-in-chief dated 10.4.2019 by PW 1. Learned court below though allowed the amendment application as above but was pleased to reject the petitioner's prayer for adducing additional evidence in terms of the said amendment and being aggrieved by the said impugned order of rejection dated 7.9.2019, the petitioner has preferred this revisional application.

Learned advocate for the petitioner submits that the court below has acted illegally and material irregularity in passing the impugned order in not considering the provision of Order XVIII Rule 17 of the Code of Civil Procedure and ought to have been considered that in view of amendment of plaintiff and with regard to additional written statement filed by the defendant, the recalling of PW 1 is to be allowed. Accordingly, the petitioner has prayed for setting aside the impugned order and to allow the petitioner to recall

PW 1 for tendering additional examination-in-chief, for the ends of justice.

Learned advocate for the opposite party raised objection contending that in the additional examination-in-chief, the petitioner had incorporated certain other facts in paragraph 8 to 11 of his petition for recalling PW 1 which are not even in the amended plaint and as such he cannot travel beyond the pleading in examination of his witness. He further submits that the trial court rightly rejected the prayer for adducing evidence in view of the fact that the concerned case record has already been exhibited and as such, the order impugned does not call for any interference.

Having considered the submissions made by the learned counsel appearing on behalf of the parties and in view of the facts and circumstances appearing in the case record, it is clear that plaintiff/petitioner has already filed an affidavit in chief for recalling the plaintiff's witness no. 1 on 10.4.2019. Accordingly, the subject matter of examination-in-chief by way of additional evidence has already been brought in the record. In such a situation, if the defendant/opposite party no. 1 gets opportunity to cross examine the said witness then the defendant/opposite party will have no cause to prejudice because they will avail opportunity to cross examine the witness, on the contrary details of such record may help

the court to adjudicate the real controversy between the parties conclusively and effectively.

In view of above, the impugned order no. 135 dated 7.9.2019 passed by learned Civil Judge (Junior Division), 2<sup>nd</sup> Court, Tamluk in Title Suit no. 2814 of 2014 is hereby set aside. The trial court is directed to allow the petitioner to tender his additional examination-in-chief to be adduced by PW 1 on recall and to give the opportunity to the opposite party to cross examine the said witness within a period of two months from the date of communication of the order. The learned trial court is further directed to expedite the final hearing of the suit and to dispose of the entire proceeding preferably within a period of six months from the date of communication of the order.

Accordingly, C.O. 3819 of 2019 is disposed of.

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

**(Ajoy Kumar Mukherjee, J.)**