

19.04.2022
Court No. 18
Item no.23
CP

C.O. 4107 of 2019

Sri Shib Kinkar Ghosh & anr.
Vs.
Goutam Ghosh & anr.

Mr. Chittapriya Ghosh
Ms. Priyanka Saha
Ms. Komal Singh

...for the petitioners.

Affidavit of service filed in court today be kept on record.

None appears on behalf of the opposite parties despite service.

The plaintiffs in the suit for partition are the petitioners of the present application under Article 227 of the Constitution of India which is directed against an Order No. 78 dated November 15, 2019, passed by the 2nd Court of learned Civil Judge (Senior Division), Asansol, District – Paschim Bardhaman in the said suit being Title Suit No. 96 of 2014 (previous number Title Suit No. 128 of 2012).

The learned Trial Judge by the order impugned had dismissed an application filed by the petitioners seeking amendment of the plaint on the ground that the trial of the suit since has commenced, the amendment sought for is hit by the restriction of the proviso appended to Order 6 Rule 17 of the Code of Civil Procedure.

The petitioners by the proposed amendment are seeking deletion of paragraph 16 of the plaint of the said suit which at this stage cannot be allowed. However, the

petitioners by the rest portion of the proposed amendment are seeking to put the word 'A' before the word 'schedule' appearing in paragraphs 17, 18 and 19 of the plaint.

In the suit there are two schedules – Schedule – A and Schedule – B. The petitioners in some paragraphs of the plaint have referred Schedule – A to describe properties under the said schedule but in paragraphs 17, 18 and 19 have failed to specify the schedule as Schedule-A, for such omission the amendment of the plaint at this stage is not necessary, inasmuch as if the plaint is read as a whole and on such reading if the schedule mentioned in paragraphs 17, 18 and 19 is referable to Schedule-A, the same shall be understood accordingly.

The order impugned therefore does not call for any interference.

C.O. 4107 of 2019 is disposed of with the above observations.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)