

16.9.2022
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Ct. no. 652
sb

C.O. 1315 of 2020

**Ajit Dey & Ors.
Vs.
Swapan Kumar Nath & Ors.**

Mr. Soumitra Bandyopadhyay
Ms. Suchana Banerjee ...for the petitioners

Ms. Madhumita Patra
Mr. P. Dasfor the opposite party

Being aggrieved and dissatisfied with the impugned order no. 24 dated 28.1.2020 passed by the learned Additional District Judge, 2nd Court, Hooghly at Chinsurah in title appeal no. 64 of 2016, the present application has been preferred.

The petitioners contended that the opposite party nos. 1 to 6 as plaintiffs filed a suit for declaration and injunction against the petitioners in the court of learned Civil Judge, (Junior Division), 1st Court, Hooghly at Chinsurah being title suit no. 250 of 1997 which was subsequently transferred to learned Civil Judge (Junior Division), Additional Court and are treated as title suit no. 69 of 2003. In the said title suit, the petitioners have been impleaded as defendants along with opposite party nos. 7 to 11. In the said suit, the opposite party as plaintiff prayed for declaration that B schedule property measuring .005 acres in RS Dag no. 7472 belongs to

plaintiffs and the defendant nos. 1 and 2 have no right title interest in the property and also prayed for permanent injunction. The petitioners herein as defendants contested the said suit by filing written statement denying all the allegations. During pendency of the suit, survey commission was held over the suit property at the instance of the plaintiffs/opposite parties and the learned advocate commissioner filed report and plaintiffs/opposite parties accepted the said report and never objected to the same. After completion of evidence adduced on behalf of both the parties and after hearing argument, learned Civil Judge (junior Division), Additional court, was pleased to dismiss the said title suit on 13th June, 2016.

Being aggrieved and dissatisfied with the aforesaid judgment of dismissal the plaintiffs/opposite parties preferred the title appeal before the learned Additional District Judge, 2nd Court, Hooghly at Chinsurah. During pendency of the said appeal, plaintiff/ opposite party nos. 1 to 6 as appellants filed an application under Order VI rule 17 read with Section 151 of the Code of Civil Procedure before the learned appellate court and learned appellate court allowed the said amendment petition ignoring the fact that the suit has already disposed of by the aforesaid judgment and decree of the trial court dated 13.6.2016.

Learned advocate for the petitioners submits that the order allowing the amendment petition is bad in law and not maintainable. The plaintiffs/opposite parties have not stated any reason for filing the said amendment petition at this belated stage and practically by way of amendment they are trying to bring a new fact or case and also thereby trying to change the nature and character of the suit. Plaintiffs/opposite parties have also not stated as to why the amendment is necessary at this belated stage.

He further submits that learned appellate court did not at all consider the written objection filed by the petitioner/defendants passed the impugned order no. 24 dated 28.1.2020 ignoring the provision of law that no application for amendment shall be allowed after commencement of the trial, unless the court comes to the conclusion that in spite of due diligence the parties could not have raised the matter before commencement of trial. In the instant case, the plaintiffs/opposite parties have not raised the matter before the trial court and after delivery of judgment, at this appellate stage, they have come up with this amendment application.

Learned advocate for the opposite party submits that the proposed amendment if allowed, will not change the nature or character of the suit since the description of the B schedule already in the plaint is sought to made elaborate by way of amendment. The proposed

amendment is very much necessary for the purpose of effective and conclusive adjudication of the suit and if it is not allowed it will cause prejudice to the interest of the plaintiffs/opposite parties.

I have heard the contentions of both the parties. It appears from the amended plaint filed by the plaintiffs/opposite parties before the trial court on 23rd July, 2004 that plaintiffs/opposite parties in that suit prayed that the B schedule property measuring .005 acres in RS Dag no. 7472 belongs to the plaintiffs being part and parcel of RS Dag no. 7427 and not RS dag no. 7433 and that the defendant no. 1 and 2 have no right title interest in the property. In the said amended plaint, B schedule property has been described as being part of A schedule which is demarcated and measuring .005 acres of RS. Dag no. 7472.

Now it appears from the amendment application which is filed before the appellate court in title appeal no. 64 of 2016 from the schedule that after paragraph 3 by incorporating paragraph 3A in the plaint, the plaintiff wants to incorporate the periphery of the property and to describe how they have become owner of the property which is mentioned in item no. 1 and in item no. 2 by way of amending paragraph 12, they want to incorporate that the plaintiff is an absolute owner of the property purchased through sale deed no. 854 of 1989.

Learned First appellate court allowed the said amendment with the observation that for proper adjudication of the case, amendment is required to be allowed and he further observed that on going through the proposed amendment, it appears that appellant wants to incorporate said fact which have already been stated in the plaint but he wants to give detailed reason for non-mentioning of any plot no. in the schedule property purchased by predecessor of the plaintiff/appellant and he only wants to elaborate the periphery of the property.

It also appears that first appellate court has given liberty to the defendants to file additional written statements.

Having considered the facts and circumstance of the case, I am also of the view that by way of amendment the plaintiff has not tried to make out any amendment which may cause prejudice to the other party or which can take away any right accrued to the petitioner/defendants. On the contrary, the trial court rightly held that for effective and conclusive adjudication of the case, proposed amendment is necessary.

In view of the above, C.O. 1315 of 2020 is dismissed. However, such dismissal order will not preclude the defendant to file additional written statement if any nor such dismissal order will preclude parties to adduce additional evidence, if any, under the

provision of order 41, rule 27 of the Civil Procedure Code, before the appellate court. learned trial court shall made every endeavour to dispose of the appeal as expeditiously as possible preferably within a period of one year from the date of the communication of the order.

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.)