

Ct.
No.
652

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2023

C.O. 270 of 2019
Narayan Gopal Sarkar
-Versus-
Smt. Kalyani Sarkar & Anr.

Mr. Tanmay Mukherjee
Mr. Diptimoy Talukder
Mr. Abhiraj Tarafdar **...For the Petitioner**

Affidavit-of-service filed by the petitioner is taken on record. In spite of service, opposite parties are not represented.

The present revisional application under Article 227 of the Constitution of India has been preferred against order No. 13 dated 6th December, 2018 passed by the learned Civil Judge (Junior Division), Bongaon, 24-Parganas (North) in Title Suit No. 134 of 2015.

Petitioner states that the petitioner as plaintiff filed aforesaid suit, inter alia, praying for a decree of permanent injunction against the defendants / opposite parties. The defendants/opposite parties herein entered appearance and filed written statement.

It is alleged that during pendency of the said suit plaintiff/petitioner was illegally dispossessed from the suit property. Accordingly, the petitioner/plaintiff filed an application under Order VI, Rule 17 of the Code of Civil Procedure with a prayer for amendment of the plaint as per the schedule of the said application. The defendants / opposite parties filed written objection against the said application.

Learned Court below by the impugned order No. 13 dated 6th December, 2018 was pleased to reject the

plaintiff's application for amendment by which plaintiff wants to incorporate aforesaid subsequent event.

Mr. Tanmay Mukherjee, learned Counsel appearing on behalf of the petitioner submits that the learned Court below acted illegally and with material irregularity by holding that the proposed amendment preferred by the plaintiff/petitioner is barred by law of limitation. The Court below erred in holding that the proposed amendment if allowed will change the nature and character of the suit and/or it will bring out a new case altogether, if the proposed amendment is allowed.

Perused the schedule of amendment and considered.

In the proposed amendment the plaintiff wants to incorporate a prayer for recovery of possession and in the 4th paragraph of the plaint, plaintiff wants to add that the plaintiff was dispossessed from the suit property illegally on 27th September, 2015.

Learned Trial Court while rejecting the prayer for amendment observed that the plaintiff claimed his right in the suit property by way of adverse possession but it is well settled principles of law that adverse possession can be used as a shield but not as a sword. Moreover, plaintiff's case is that he was dispossessed on 27th September, 2015 but he has filed the said application seeking amendment on 15th May, 2018. Accordingly, his prayer for amendment is barred by limitation and as such prayer for amendment was rejected.

In view of the latest proposition of law as observed in the case of *Ravinder Kaur Grewal & Ors. Vs. Manjit Kaur &*

Ors., reported in (2019) 8 SCC 729, it is now well settled that plea of adverse possession can be taken both as a shield and as a sword.

Learned Counsel for the petitioner further submits that Article 65 of the Limitation Act, 1963 prescribes a limitation of 12 years for a suit for possession of an immovable property or any interest therein based on title. The present application for amendment has been filed well within 3 years of dispossession and as such the question of limitation does not arise.

Having considered the facts and circumstance of the case and from the averments made in the plaint as well as the amendment application, it does not reflect that the averments made therein are barred by limitation. At this early stage prayer for amendment cannot be rejected either on the ground that the plaintiff took plea of adverse possession as a sword or on the ground that he has filed his prayer for amendment at a belated stage. Accordingly, the impugned order is perverse and is liable to be set aside.

Thus the order impugned i.e. order No. 13 dated 6th December, 2018 passed by the learned Civil Judge (Junior Division) Bongaon, North 24-Parganas in Title Suit No. 134 of 2015 is hereby set aside. Let the plaint be amended as per schedule of the amendment petition filed on 15th May, 2018.

The plaintiff is directed to file amended plaint within a period of four weeks from the date of communication of this order. The defendant will be at liberty to file additional written statement, if any, within a period of four weeks thereafter.

The revisional application, being C.O. 270 of 2019 is thus disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)