

S/L 19
28.04.2023
Court. No. 12
Swayan

**CO 408 of 2019
With
CAN 1 of 2022
(Application not here)**

**Smt. Nandita Das & Ors.
Vs.
Thalu Murmu & Ors.**

*Mr. Asish Chandra Bagchi, Sr. Adv.
Mr. Satyajit Mandal
Mr. Suranjan Mandal*

...for the petitioners.

*Mr. Debasis Sur
Mr. Angshuman Patra*

...for the respondents.

1. Both the parties are represented by their respective learned Advocates.
2. In this revisional application as filed under Article 227 of the Constitution of India the Order No. 62 dated 17.05.2017 and Order No. 72 dated 06.08.2018 as passed by learned Civil Judge, Senior Division, 2nd Court at Malda in P. Suit No. 284 of 2010/R. 607 of 2014 has been assailed. It reveals that by the impugned Order No. 62 dated 17.05.2017 learned Trial Court permitted the defendant to amend his written statement.
3. It reveals from the certified copy of the order sheets that on 06.08.2018 learned Trial Court took up the hearing of petition for amendment of plaint as filed by the plaintiff and by the impugned order No. 72 as passed on the self-same date that is on 06.08.2018 rejected the prayer for amendment as filed on 16.09.2017 by the plaintiff.

4. In support of the instant revisional application, learned Advocate for the plaintiffs/revisionists at the very outset draws attention of this Court to the photocopy of the amendment petition as filed before the learned Trial court on 16.09.2017. It is submitted that the proposed amendment of plaint as sought for is very much required for effective adjudication of the said suit and the facts which have been proposed to added by way of amendment was/were not within the knowledge of the plaintiffs till the defendants filed his amended written statement by virtue of order No. 62 dated 17.05.2017.

5. Learned Advocate for the defendants/opposite parties, however, opposes the contention as raised by the learned Advocate for the plaintiffs/petitioners. It is contended by him that since recording of evidence has already been started in the said suit, learned Trial Court is very much justified in rejecting the prayer for amendment.

6. On perusal of the entire materials as placed before this court and after hearing the learned Advocates for both the sides, it reveals to this Court that after passing of the impugned Order No. 72 dated 06.08.2018 learned Trial Court fixed 26.11.2018 for service return upon some of the defendants. Therefore, it reveals to this Court that before the learned Trial Court in P. Suit No. 284 of 2010 the evidence stage has not yet reached since service upon the defendant Nos. 18, 19 and 20 are yet to be completed.

7. Coming to the factual aspects of the amendment petition as filed before the learned Trial Court, it appears

that the amendment as sought for by the plaintiffs before the learned Trial Court is very much innocuous and those are very much necessary for effective adjudication of the suit as pending before the learned Trial Court.

8. It is further appears to this Court that the proposed amendment, if allowed, would not change nature and character of the suit for partition.

9. Consequently, the impugned Order No. 72 dated 06.08.2018 as passed by the learned Trial Court is hereby set aside.

10. Consequently, the plaintiffs' application dated 16.09.2017 under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint also stands hereby allowed on contest.

11. Plaintiffs are hereby directed to file their amended plaint before the learned Trial Court within a fortnight from the date of passing of this order after serving a copy of the same upon the learned Advocate/Advocates for the contesting defendants.

12. Liberty is given to the contesting defendants of P. Suit No. 284 of 2010 as pending before the learned Trial Court to file his/their additional written statement within a period of two weeks from the date of service of the copy of the amended plaint by the plaintiffs.

13. It is made clear that this Court has not interfered with the Order No. 62 dated 17.05.2017 as passed by the learned Trial Court.

14. In view of such, the instant revisional application being CO 408 of 2019 is hereby allowed on contest in part and all interim applications stands hereby disposed of.

14. Parties to act on the server copies of this order.

15. 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.)