

30.3.2023
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Ct. no. 652
sb

CO 388 of 2017

**Madan Mohan Adak & ors.
Vs.
Sridam Mallick**

Mr. Prabal Mukherjee
Mr. Suhrid Sur ...for the Petitioners

Mr. Dinabandhu Chwodhury
Mr. Amal Kumar Saha
Mr. Irish Pal ...for the opposite parties

Challenging the order dated 1.12.2016 passed by the learned Civil Judge, (Junior Division), 2nd Court, Hooghly in Title Suit no. 74 of 1995 so far as it relates to rejection of point nos. 2,3,4,5,6,8,9,10,11 and 13 as mentioned in schedule of amendment in petitioner's application under Order VI rule 17, the present application under Article 227 of the Constitution of India has been preferred.

The petitioners contended that the plaintiff/petitioners have filed aforesaid suit for eviction and damages against the opposite party. The case of the plaintiffs as made out in the plaint is that the plaintiff no. 1 has been owing and possessing the plot no. 315/706 while the plaintiffs are jointly owing and possessing the plot no. 315 by rearing and catching fishes. The plaintiff no. 2 deals with fishes and rears fishes in the tank situated in plot no. 315. On November

7, 1993, the defendant sought from the plaintiffs' licence to stay in the plaintiffs' property mentioned in schedule B of the plaint for a period of four months assuring that the defendant will leave the licensed property after the cessation of said four months. After expiry of the period, the defendant failed to vacate the schedule B property and illegally occupying the said property as trespasser. Under such circumstances, the suit has been filed by plaintiffs praying for a decree of eviction of the defendant from the suit premises.

The defendant is contesting the suit by filing written statement. The defendant's contention is that the defendant has acquired right title and interest in the said property by way of adverse possession and the name of defendants have been recorded in the record of rights.

Case of the petitioner is as the defendant claimed title over the property and his name has been recorded in the record of rights, the plaintiff has took out aforesaid application under Order VI rule 17 for amendment of plaint. Learned court below, after hearing both the parties, was pleased to reject the petitioner's application for amendment. Petitioner contended that court below rejected said application in part without considering the same in its proper perspective, simply on the basis of oral objection raised by the opposite party.

Learned counsel for the petitioners further submits that the court below has failed to exercise the jurisdiction

vested on it by law and was erred in holding that if the proposed amendment is allowed, it will change nature and character of the suit. Learned court below failed to consider that if the amendment as sought for, is not allowed, it will give birth to multiplicity of judicial proceedings. Practically, he has passed the order mechanically without considering the purport and object of the application.

Learned counsel for the opposite party, through virtual mode, submits that the suit was filed in the year 1995 and accordingly, the written statement was filed in the year 1996 and since then it is within the knowledge of the plaintiff that they have acquired title in the suit property but at a belated stage, they have come up with the aforesaid amendment prayer which is not maintainable in the eye of law as the said claim of the plaintiff is barred by limitation. Accordingly, he has prayed for dismissal of the present application.

I have carefully considered the submissions made by both the parties. It appears that from the pleading, as submitted by the parties that both the parties have claimed right title and interest over the schedule B & C property schedule property to the plaintiff and as such in order to adjudicate the real controversy between the parties conclusively and effectively, the proposed amendment has been sought for. Admittedly, the trial has not yet been commenced whether defendant has acquired

title in the said suit schedule property by way of adverse possession or otherwise that question is required to be adjudicated in the suit itself. The object of the amendment application is to minimize litigation. If the proposed amendment be not allowed, there is likelihood of giving birth to multiplicity of proceedings.

In the present case final determination as to whether plaintiff's claim of title in the suit property is barred by time or not and on the other hand whether defendant has acquired any title in the property or not, could have been decided only after considering the evidence led by the parties. At this stage court are not supposed to go into correctness or falsity of the case made out in the application for amendment but to consider whether such amendment is necessary to decide the real dispute between the parties. As the aforesaid points of schedule of amendment petition are neither *malafide* nor has been filed merely to cause delay, prayers made herein is worthy to be allowed.

Considering the aforesaid facts and circumstances of the case and for effective and conclusive of the suit, I find that the proposed amendment is required to be allowed as a whole and court below erred in allowing it in part. Proposed amendment if allowed, it will not change the nature and character of the suit as the suit will remain suit for eviction of licensee and the proposed amendment if allowed, it will not take away any

right of the defendant which cannot be compensated in terms of money.

Accordingly, C.O. 388 of 2017 is allowed.

The court below is directed to amend the plaint in terms of the points mentioned in point nos. 2,3,4,5,6,8,9,10,11, and 13 also which includes addition of parties and the court below will give liberty to the defendants to file additional written statement in terms of the present amendment and to the added defendants to file written statement if any after service of notice upon them.

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.)