

13.1.2023
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Ct. no. 652
sb

C.O. 415 of 2018

Hamja Mondal & ors.
Vs.
Sk. Jakir & ors.

Mr. Toslim Ali
Ms. Saba Parween ...for the petitioners

Mr. Prabir Kumar Misra
Mr. Shibendra Nath Chattopadhyay
Mr. Priyam Misra
....for the O.P. no. 3

Being aggrieved and dissatisfied with the order dated 13.12.2017 passed by the learned Civil Judge (Junior Division), Amta in Title suit no. 56 of 1986, the present application has been preferred.

By the impugned order, learned court below was pleased to reject the plaintiff's prayer for amendment under Order VI Rule 17 of the Code of Civil Procedure. The petitioners contended that the petitioners filed aforesaid suit before the learned Civil Judge (Junior Division), Amta for specific performance of contract in the year 1986. The opposite party/defendants appeared in the suit and contested the same by filing written statement. The petitioners filed aforesaid suit for specific performance of contract on the basis of deed of Ekrar Patra which was executed on 26.7.1982. Defendants filed an application for opinion of hand writing expert in

respect of the signature of one namely, Sk. Samser Ali and learned court obtained specimen signature of Sk. Samser Ali in open court and as per order no. 77 dated 8.3.1996, the court below had sent the signature of Sk. Samser Ali in the said Ekrar Patra deed but along with specimen signature, before hand writing expert. The petitioners submit that before sending the specimen signature of Sk. Samser Ali in Ekrar Patra deed, anybody on behalf of the defendant has tampered the signature of Sk. Samser Ali in the Ekrar Patra deed by wooden pencil and as such when it was sent for expert opinion, the hand writing expert reported that no opinion could be formed as the signature in the Ekrar Patra deed has been tampered by putting mark over the same with the help of wooden pencil.

Now the petitioners want to incorporate such fact by way of amendment but learned court below without considering the same, was pleased to reject the prayer made by the petitioners. He further submits that the learned court has failed to consider the gravity of such subsequent fact and tampering of the signature by wooden pencil and also failed to consider the cause of delay for incorporation of subsequent fact.

Learned counsel for the opposite parties submits that the plaintiff/petitioner had earlier filed similar type of amendment application on 14.9.2016 which was rejected by the trial court and a revisional application

was also preferred which has also rejected by this Hon'ble Court. Hence, the instant application is barred by estoppel and resjudicata as the issue has already been adjudicated by the court below. He further submitted that the suit has been posted for peremptory hearing and as such trial commenced and plaintiff has not pleaded in spite of due diligence, they could not discover the fact earlier or that the fact is subsequent one.

Having considered the facts and circumstances of the case and that the matter has already been adjudicated in an earlier proceeding, and that proposed part of amendment is hardly required to adjudicate the present dispute, I find no merit in this present application which are liable to be dismissed.

Accordingly, C.O. 415 of 2018 is dismissed. The impugned order dated 13.12.2017 is hereby affirmed.

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.)