

3.7.2023  
93  
Ct. no. 652  
sb

**CO 499 of 2018**

**Sri Bharat Chandra Mahato & Ors.  
Vs.  
Sri Ramapada Mahato & Ors.**

Mr. Chittapriya Ghosh  
Ms. Priyanka Saha                      ...for the Petitioners

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

Being aggrieved by the order no. 38 dated 29.11.2017 passed by the learned Civil Judge, Senior Division, Additional Court, Purulia in Title Suit no. 215 of 2016, present application under Article 227 of the Constitution of India has been preferred.

The petitioners being plaintiffs filed aforesaid suit for partition against the opposite parties herein. The defendant/opposite parties contested the said suit by filing written statement. During trial of the said suit, the plaintiffs detected that R.S plot no. 740 having an area of 16 decimal, has already been acquired by the State for irrigation purpose for construction of Kangsabati project but the said plot of land inadvertently included in the suit properties. As such the plaintiffs/petitioners filed an application under Order VI rule 17 of the Code of Civil Procedure, thereby praying for deletion of the said plot of

land in the schedule without changing nature and character of the suit. Learned court below was pleased to allow the said application. The petitioners subsequently filed additional written statement in connection with said amendment of plaint. Petitioner's case is in the additional written statement, the defendants had made out a new case which was neither in their original written statement nor such additional written statement has been made against the amendment made in the plaint by the plaintiffs. The petitioners as plaintiffs submit that they have categorically objected against the acceptance of the said written statement. Subsequently, the defendants/opposite parties, in order to prove their contention made in the additional written statement, made an application under Section 151 of the Code praying for issuance of summon to the Block Land & Land Reforms Officer to depose in the suit. The petitioners duly contested the said application under Section 151 of the Code by filing written objection and prayed for rejection of the said application. However, learned court below by the impugned order, was pleased to allow the said application and directed to issue summon upon the Block Land & Land Reforms Officer, ignoring the plaintiff's claim that the additional written statement has not yet been accepted and that by way of additional written statement, the defendants are trying to

make out a new case deviating from their original written statement.

Learned counsel for the petitioners submits that the order impugned is illegal and is not sustainable in the eye of law. The court below while passing the impugned order, failed to consider that the R.S. plot no. 161, 162 and 252 of the Mouza Jorobari, neither the subject matter of the present suit nor the defendants in their original written statement had made out any new case in regard to the said plots of land. The learned court below failed to appreciate that by the unaccepted additional written statement, the defendants are trying to make out a new case and to prove the same, they want to call the witness. Accordingly, the petitioner has prayed for setting aside the order impugned.

On perusal of the copy of the order-sheets, it appears from order no. 34 dated 22<sup>nd</sup> August, 2017, that the defendants filed additional written statement but the court below ordered to keep it with the record without making any observation as to whether the court below has accepted the said additional written statement as a part of the pleading or not. It further appears that the plaintiffs filed a written objection on a subsequent date i.e. 1.9.2017 against the additional written statement filed by the defendants and also filed an application to recall defendant's witness. It is not clear from the subsequent orders as to whether the court below has accepted the

additional written statement filed by the defendant or not and without making the same specific through appropriate order, he has called the Block Land & Land Reforms Officer as defendant's witness to prove the contention made in the additional written statement.

In view of such matter, the impugned order no. 38 dated 29.11.2017 is set aside. Learned court below is directed to dispose of the plaintiff's objection dated 1<sup>st</sup> September, 2017 on the point of acceptability of additional written statement filed by the defendants within a period of four weeks from the date of communication of the order. Only in the event of acceptance of additional written statement, if any, the question of proving contents of additional written statement may arise.

C.O. 499 of 2018 is accordingly disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties upon compliance of all requisite formalities.

**(Ajoy Kumar Mukherjee, J.)**