

13.02.2023.
p.b.
Sl. No.27.

C.O. 674 of 2019

Alpana Bhadra & Anr.
Vs.
Md. Rabiul Islam & Ors.

Mr. Tarak Nath Halder,
Mr. Animesh Paul.
.....for the petitioners.

Mr. Partha Pratim Roy,
Mr. Susenjit Banik.
.....for the opposite party.

Both the parties are represented by their respective learned advocates.

The affidavit of service filed in Court today be kept with the record.

The instant application under Article 227 of the Constitution of India arises out of Order No.15 dated 1st October, 2018, as passed by the learned Civil Judge (Junior Division), 1st Court at Basirhat, North 24 Parganas in Title Suit No.117 of 2016 whereby and whereunder the said Court by the impugned order has been pleased to dismiss the plaintiffs' application for amendment as filed under Order 6, Rule 17 CPC.

In support of the instant revisional application, learned advocate for the plaintiff/petitioners at the very outset draws attention of this Court to the plaint as filed before the learned trial court, the written statement as

filed by the opposite parties, the amendment petition and the impugned order.

It is contended that after filing Title Suit No.117 of 2016 which is a suit for declaration and injunction in respect of the suit property, the present defendant/opposite parties filed their written statement from which the plaintiffs came to learn that in respect of the suit property the wife of the original owner of the present plaintiff had also executed another deed in favour of some third party causing prejudice to the right, title and interest of the plaintiffs over the suit property. It is thus contended that after becoming aware about the existence of the said fraudulent deed, the amendment as sought for, has become necessary for proper adjudication of the dispute and to avoid multiplicity of suits and proceedings.

Per contra, learned advocate for the defendant/opposite parties contended that learned trial court is very much justified in passing the impugned order since the plaintiffs while adducing his evidence in the said suit would get ample opportunity to controvert the defence case by adducing evidence.

On perusal of the entire materials as placed before this Court and after hearing the learned advocates of both sides, it appears to this Court that after becoming aware of another deed in respect of self-same suit property, plaintiff made no mistake in approaching the trial court by making

amendment of his plaint, particular of which has been mentioned in the schedule of the amendment petition. In considered view of this Court, if the amendment as sought for is allowed that would help the learned trial court to decide the real point of controversy as well as it would help the parties to the said suit from facing with the multiplicity of suits and proceedings.

In view of such, the instant revisional application is hereby allowed. The impugned order No.15 dated 1st October, 2018, as passed by the learned Civil Judge (Junior Division), 1st Court at Basirhat, North 24 Parganas in Title Suit No.117 of 2016 is hereby set aside. Consequently, the petition for amendment as filed by the plaintiffs under Order 6, Rule 17 dated 9th July, 2018 in the said suit is hereby allowed on contest.

Leave is hereby granted to the present plaintiff/ revisionist to pray for amendment of the prayer portion of the plaint also in the light of the amendment as allowed by this Court and in the event such prayer is made, learned trial court is hereby directed to dispose of the said application for amendment without being influenced by any of the observation as made in this order.

Plaintiffs are directed to file amended plaint incorporating the amendment within a month from the date of communication of this order. Learned trial court is further directed to give opportunity to the contesting

defendants to file their additional written statement(s), if there be any, within a period as prescribed by law.

With the aforementioned, the instant revisional application is disposed of.

(Partha Sarathi Sen J.)