

23.6.2023
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Ct. no. 652
sb

CO 809 of 2019

**Ramkrishna Mondal
Vs.
Mahabir Mondal & Ors.**

Mr. Pinaki Dhole
Md. Ziaur Rahaman ...for the Petitioner

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

This is an application under Article 227 of the Constitution of India challenging the order dated 16.1.2019 passed by the learned Civil Judge, Senior Division, 2nd Court, Malda in Partition suit case no. 240 of 2011, whereby the learned court below was pleased to reject the plaintiff's application for amendment filed under Order VI rule 17 of the Code of Civil Procedure.

The petitioner's case is that the petitioner being plaintiff filed aforesaid partition suit against the defendant/opposite parties. The opposite parties as defendant appeared in the suit and filed written statement wherein the opposite parties contended that the suit is suffering from the defects of non-joinder and misjoinder of parties as well as properties. It was further stated that one property standing in the name of their predecessor, Madan Mohan Mondal in L.R. Khatian no.

2413 measuring 1.96 acres which is enjoyed by plaintiff as well as defendant No.1, has not been brought in the common hotchpot and Prasun Mondal and Loumi Mandal have not been made party nor their joint property have been brought in the common hotchpot of the partition suit. Beside this plaintiff has also left out some other co-sharers as well as joint properties for which suit is barred for partial partition. However opposite party No.4 in his written statement has supported plaintiff's case.

On receipt of written statement petitioner/plaintiff filed interrogatories in order to include all joint properties in the suit. The defendant/opposite parties herein accordingly answered the interrogatories and on the basis of said answer to the interrogatories, the plaintiff/petitioner herein filed an application for amendment before the court below under Order VI rule 17 of the Code to incorporate the left out joint properties in the common hotchpot in the suit for partition. Learned court below, by the impugned order, was pleased to reject the said application for amendment.

On perusal of the order impugned, it appears that practically the said order was passed without assigning any reason and without considering what was the prayer sought for. Such lackadaisical approach in disposing of the interlocutory application without assigning any reason is deprecated. Since this is a suit for partition and schedule of amendment palpably makes it clear that the

amendment as sought for, is only to bring the left out undivided properties of the parties in common hotchpot, the court below ought to have allowed the said prayer for effective and conclusive adjudication of the suit and also for ends of justice.

I am also told that the trial of the suit has not yet commenced and as such there was no apparent reason for rejection of the said prayer by the court below.

In view of above, C.O. 809 of 2019 is allowed. The plaint is accordingly amended as per schedule of the amendment application and let it be incorporated in the plaint accordingly. The plaintiff is directed to file amended plaint before the court below within two weeks from the date of communication of the order.

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.)