

Ct.
No.
652

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akb

04.07
2023

C.O. 1203 of 2018
Naskar Ali Sheik
-Versus-
Alekjan Bibi & Ors.

Mr. Biswarup Biswas

...For the Petitioner

Affidavit-of-service filed by the learned Counsel appearing for the petitioner is taken on record.

The opposite parties are not represented.

This revisional application under Article 227 of the Constitution of India has been assailed against the order No. 73 dated 20th January, 2018 passed by the learned Civil Judge (Senior Division), 3rd Court, Nadia at Krishnagar in connection with Title Suit No. 169 of 2013.

By the said impugned order the learned Court below refused to accept fresh written statement filed by the defendant No. 1 on 29th March, 2017. The petitioner/defendant No. 1 submits that R.S. Plot No. 147 measuring about 360 decimals of land originally belonged to their predecessor Chhaleman Sheikh who sold 40 decimals of land to her daughter who is plaintiff/opposite party No. 1 by a registered sale deed in the year 1972. Said Chhaleman Sheikh subsequently died leaving behind the plaintiff and defendants as his legal heirs.

The plaintiff/opposite party No. 1 herein filed the aforesaid suit for partition of 40 decimals of land which she acquired by way of purchase from the original owner i.e. predecessor of the parties. Initially the defendant No. 1 petitioner along with defendant Nos. 3, 4, 5 and 7 filed their written statement in the said suit denying the title of the

plaintiff. Defendant No. 1 petitioner herein submits that defendant No. 1 now wants to file separate written statement admitting the claim of the plaintiff/opposite party No. 1, since in the aforesaid joint written statement, he put his signature without reading the contents. Subsequently he became aware of the said Deed of Gift executed by his father, the original owner, in favour of the plaintiff and as such he is inclined to file separate written statement afresh admitting plaintiff's aforesaid share in the suit property, which she acquired by way of Deed of Sale executed by the father of the parties.

Learned Court below after hearing both the parties refused to accept the defendants No.1's separate and fresh written statement on the ground that original written statement was filed by the defendant Nos. 1, 3, 4, 5 and 7 jointly denying plaintiff's title in the suit property and now defendant No. 1 alone cannot by filing separate written statement admit the share of the plaintiff.

Merly because the contents of fresh written statement filed by defendant No. 1 alone is inconsistent with the previous joint written statement filed by defendant No. 1 along with other defendants, is not a good reason for rejecting the defendant No. 1's fresh written statement. This is a suit for partition and in a suit for partition everyone is plaintiff and everyone is defendant and there is also scope for transposition. As per general rule, in cases of this nature leave to file written statement afresh admitting plaintiff's claim should have been granted, unless it is shown that defendant No. 1, who sought to file written statement afresh, is acting mala fide. Here defendant No. 1 pleaded that he put his signature on earlier written statement without

understanding contents therein. The contents of present amendment will no way prejudice plaintiff, rather it will support plaintiff's case. Considering the fact that the instant suit is a suit for partition court below either could have transposed defendant No. 1 in the category of plaintiff or he ought to have accepted his fresh written statement. This is also because in such suit there is no bar for the defendant No. 1 to depose in support of plaintiff's case.

In such view of the matter the order impugned is not sustainable. The learned Court below is directed to accept said additional written statement and to conclude evidence of defendants witness preferably within a period of four weeks from the date of communication of this order.

The revisional application, being C.O. 1203 of 2018 is thus disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)