

June 19, 2023
Sl. No.17
Court No.19
s.biswas

CO 1461 of 2023

Md. Ayaz and others
vs.
Munni Begum and others

Mr. Aniruddha Chatterjee
Mr. Tarak Nath Halder
Mr. Rabiudding Ahmed

... for the petitioners

Mr. Ataur Rahman
Mr. Sagufa Naaz

... for the opposite party no.1

Affidavit of service filed by the petitioners is taken on record.

The plaintiff/opposite party no.1 appears to contest the proceeding.

This revisional application has been filed challenging the order dated March 14, 2023, by which an application for amendment of the plaint has been allowed.

By way of an amendment, the plaintiff sought to correct some averments in paragraph nos.22 and 24, in prayer (b) and the schedule of the plaint, by incorporating the expression 'structure' instead of 'thika land' and with further incorporation of the pleadings that the plaintiff had a share in the structures on the said land.

Mr. Chatterjee, learned advocate appearing on behalf of the defendant nos.2, 3, 6 and 7, submits that his clients opposed the such amendment and they have approached this court against the order impugned.

According to Mr. Chatterjee, the insertion of the expression 'structure' in paragraphs 22 and 24, in the prayer portion and the schedule of the plaint, would take away an admission that the land on which the structure was situated was a thika land.

Mr. Rahman, learned advocate appears on behalf of the plaintiff/opposite party no.1 and submits that certain mistakes had cropped up in the relevant paragraphs, prayer and the schedule of the plaint. As the plaintiff was claiming share in the structures situated on the thika land, such correction was sought to be made and they were formal. The nature and character of the suit property would not change. Moreover, the application for amendment was filed prior to the commencement of the trial. Unless the mistakes were rectified, the cause of action of the plaintiff would not be properly pleaded.

The schedule of amendment is quoted below:-

1. In the paragraph no.22 of the plaint some portion will be deleted the following sentence "the plaintiff is owner of 480 sq.ft. on the South-East corner of the Thika land out of 2900 sq.ft." and insert in paragraph no.22 after declaring that and before and the plaintiff the following sentence be inserted "the share of the structure of the plaintiff".
2. In the paragraph no.24 after portion and before at premises no. the following

sentence will be deleted “by declaration that the plaintiff is a owner of the thika land measuring 480 sq.ft be the same or a little more or less on the south-east corner consists of two shop rooms and 2 residential rooms”

3. Deletion in the prayer portion of (b) of the plaint after the plaintiff and before arises the following prayer” that the plaintiff is owner of thika and measurig 480 sq.ft. be the same or a little more or less arises”
4. In the 1st schedule of the plaint after parcel of and before thika land the following word “structure over” be inserted by way of amendment
5. In the 2nd schedule of the plaint after percel thika land the following sentence “of the structure standing upon” be inserted by way of amendment.

This court finds that in paragraph nos. 2 to 9 of the said plaint, the facts as to how the opposite party/plaintiff happened to become a co-sharer in respect of the property has been pleaded. In paragraph no.2, the fact that the structures were on a thika land has been pleaded. In paragraph 12, allegations against the defendants in the suit, with regard to the alleged construction on the thika land has been mentioned.

Thus, the contention of Mr. Chatterjee that the amendment would take away the admission that the suit relates to structures on a thika land is

unfounded. The cause of action of the plaint is based on alleged co-sharership and/or title with regard to the structure situated on a thika land. In the prayer, schedule 1 and paragraphs 22 and 24, the expression 'structure' was omitted. Hence the rectification was sought for by incorporation of the word structure. The mistakes were obvious as the claim was based on co-ownership in respect of the structures. None can be owners of the thika land.

Under such circumstances, this court does not find any illegality in the order impugned.

The merits of the averments in the amendment application were not required to be gone into. The said amendment did not change the nature and character of the suit. The order impugned does not require any interference.

However, the question of maintainability as raised by Mr. Chatterjee in the application under Order 7 Rule 11 of the Code of Civil Procedure, shall be decided on its own merits and shall not be influenced by this order. Mr. Chatterjee has produced a copy of an order passed by a learned Co-ordinate Bench by which the learned court below was directed to dispose of the said application within March 2023.

Under such circumstances, the learned court below is requested to dispose of the application

expeditiously. The amended plaint shall be filed within 2 weeks and additional written statement be filed within 2 weeks thereafter.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)