

144     **20.09.  
2023**

Ct. No. 652

Ab

**CO 2258 of 2015**

**Sri Kirtibas Kapat and others  
Vs.  
Jayanta Halder and others.**

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**Mr. Gopal Chandra Ghosh,  
Mr. Sayan Sengupta,  
... for the petitioners.**

**Mr. Sounak Bhattacharya,  
Mr. Sandip Das.  
... for the opposite parties.**

This is an application under Article 227 of the Constitution of India wherein an Order being No. 160 dated 28<sup>th</sup> April 2015 passed by the learned Civil Judge (Junior Division), 1<sup>st</sup> Additional Court at Diamond Harbour in Title Suit No.12 of 2011, has been assailed.

The petitioners contended that the opposite party no. 1 to 8 herein as plaintiffs filed the aforesaid suit for declaration and injunction in respect of the property mentioned in the schedule to the plaint. The petitioners herein as defendant no. 1 to 6 appeared in the said suit and filed the written statement.

The petitioners as defendants denied in written statement that the heir of Nagendra Nath Bikram and/or their successors in office could be in occupation of 1.10 acres of land comprising of plot no. 4289/4414, as alleged in the plaint. The plaintiffs and the proforma defendants have alleged to have make an amicable partition and had further alleged that they have filled up the land and converted into Bastu where they have raised the room, kitchen etc.

The petitioners submitted that in their additional written statement they have stated that Government of West Bengal constructed a new pucca road from Raidighi to Kankandighi width 100 ft. which has covered the

scheduled case land of the plaintiffs in plot no. 4289/4414. In the said suit, plaintiffs filed an application for injunction, but the learned Judge after considering the prayer of the plaintiffs was pleased to dismiss the said application. After lapse of more than a decade from filing of the suit, the opposite party no. 1 to 7 as plaintiffs filed an application for amendment in respect of which the defendants also filed written objection. The Court below by the impugned order allowed the said application for amendment without considering the local inspection report filed by the Commissioner.

The petitioners' contention is that the old plot no. 4289/4404 are divided into eleven L.R. Plots being Nos. 4526 to 4536. The opposite parties as plaintiffs recorded their names in the L.R. lot No.4536. The opposite parties failed to disclose the fact of L.R. recording in their amendment application. Plaintiffs' name recorded in 4536 but claimed their right in other plots in amendment application. They have suppressed about such recording in their amendment application. Accordingly, the proposed amendment is vague, illegal and practically by way of amendment, the plaintiffs have tried to bring out a new case, which is not permissible in the eye of law.

Mr. Gopal Chandra Ghosh, learned Counsel appearing on behalf of the petitioners further submitted that the suit property mentioned in Title Suit No. 12 of 2011 is situated in the South-Western corner, but in the application for amendment, the plaintiffs are trying to change the position of suit property and depicted, as if it stands, in the North-Western corner. The hands sketch map drawn in the plaint is different from the sketch map shown in the amendment application and, as such, the plaintiffs are trying to change the physical position of the lands in the amendment application and, accordingly, the Court below ought not to have allowed the prayer for amendment, because it is prejudicial to the interest of the defendants and, as such, the petitioners prayed for

setting aside the order impugned.

Mr. Sounak Bhattacharya, learned Counsel appearing on behalf of the opposite parties, submits that the proposed amendment relates to subsequent event, which occurred during pendency of the suit. In fact, on 19<sup>th</sup> September 2014, the defendants have constructed new structure illegally and the incident of forceful removal of tin-shaded structure by the defendant took place few days after local inspection was held. Plaintiffs had gone to Police Station to lodge complaint but the Police had refused to register a case. On 19<sup>th</sup> September 2014, the defendants have practically ousted the plaintiffs from the 'kha' schedule within 'ka' schedule property illegally. Plaintiffs want to bring aforesaid subsequent event by way of amendment in the plaint and also sought for appropriate relief by way of amendment in the prayer portion of the plaint.

I have gone through the schedule of amendment. It appears in schedule of amendment in paragraph 12(kha) that the plaintiffs by way of amendment wanted to incorporate that on 19<sup>th</sup> September 2014 they were forcibly ousted from the schedule mentioned property, during pendency of the suit though due to inadvertence, the date has been mentioned at one place of amendment application as 19<sup>th</sup> September 1994.

On being asked, the learned Counsel appearing on behalf of the opposite parties submits that due to inadvertence the date has been written as 19<sup>th</sup> September 1994 in the second line in paragraph 12(kha) of the schedule of amendment, but it should be 19<sup>th</sup> September 2014 as mentioned in later part of amendment schedule. If that be so, the incident described in the schedule of amendment appears to be subsequent event and, the proposed amendment may be required for effective adjudication.

The settled principle of law is if the proposed amendment is bona fide, legitimate, honest and necessary

for the adjudication of real controversy between the parties, the Court must not refuse the same. The Court below while allowing the amendment application specifically observed that the proposed amendment is necessary for proper adjudication of the case and necessary to determine the real controversy. Such observation of the Trial Court from the facts and circumstances of the case has not resulted in any gross or manifest failure of justice, nor has there been any illegality or perversity in the order impugned, which may prompt this Court to step into exercise its supervisory jurisdiction under Article 227 of the Constitution of India.

In such view of the matter, CO 2258 of 2015 is dismissed.

The order dated 28<sup>th</sup> April 2015 is hereby affirmed. The defendants will be at liberty to file additional written statement, if any, within two weeks from the date of filing the amended plaint by the plaintiffs.

The suit is pending for a considerable period of time, the trial Court is requested to expedite the hearing of the suit and to make every endeavour for disposal of the same within a period of twelve months from the date of communication of this order.

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

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

