

13.4.2023
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Ct. no. 652
sb

CO 1956 of 2021

Sandip Kumar Pal & Anr.
Vs.
Depali Pal & Anr.

Mr. Partha Pratim Roy
Mr. Anirban Das ...for the petitioners

Mr. Tulsi Das Roy
Ms. Alina Mondal
Mr. Thirthankar Roy ...for the opposite parties

This is an application under Article 227 of the Constitution of India against order dated 12.4.2021 passed by the learned Civil Judge, Senior Division, 1st court, Krishnanagar, Nadia in Title Suit no. 3 of 2009.

The petitioners contended that the petitioners as plaintiffs filed aforesaid suit for partition against the opposite parties and the case made out by the plaintiffs in the said suit is that both the suit property as mentioned in lot no. 1 and 2 are joint properties of the parties and in lot no. 1, the plaintiffs and the defendants have got equal share and in lot no. 2, plaintiffs have 2/3 share and the defendants have 1/3 share. On the contrary, the defendant's contention is that Gopeswar Pal, predecessor of plaintiff had sold his share in the suit property by a deed dated 26.8.1972 in favour of his brother Nema Pal who is the predecessor of defendants and as such plaintiffs had not inherited any share from Gopeswar Pal

but in order to make illegal gain, they have instituted the said suit with false statements. Now plaintiffs, by way of amendment has sought to add in the plaint that the deed dated 26.8.1972 by which the defendants are claiming absolute right title and interest in the suit property is a forged and fabricated document. Learned court below, after hearing both the parties, was pleased to reject the prayer for amendment.

Learned counsel for the petitioner submits that the court below had acted illegally in rejecting the said application for amendment holding that the proposed amendment application has been filed at a belated stage and he further submits that if the proposed amendment is allowed, it will not change the nature and character of the suit. He further argued that the proposed amendment is very much required for proper adjudication of the suit, since this is a suit for partition among the co-sharers.

Learned counsel for the opposite parties submits that the proposed amendment is not at all required for effective and conclusive adjudication of the case. The suit has already reached in its peremptory hearing stage and the plaintiff has filed the said application with the intention to drag the suit and to harass the opposite parties herein and as such it is liable to be rejected.

It appears from the impugned order that the defendants have filed their written statement on 18.6.2009 wherein they have disclosed about execution of

deed by Gopeswar Pal in favour of the defendant's predecessor. At least from 18.6.2009, the plaintiffs are aware about the execution of said deed by Gopeswar Pal. Now on 27.2.2020, they want to incorporate in the plaint by way of amendment that the deed executed by Gopeswar Pal on 18.6.2009 is a fraudulent deed. Such plea is hopelessly barred by limitation. Since from the face of record, plaintiffs have no scope to dispute the plea of limitation, the defendants have acquired a right by bar of limitation and if the same is sought to be taken away by amendment of plaint, it would be prejudicial for the defendants. Amendment of plaint in such circumstances, is liable to be refused because permitting such amendment would defeat the right accrued in favour of the defendants.

In view of above, I find that court below has not committed any mistake in rejecting the prayer for amendment and as such the order impugned does not call for any interference.

Accordingly, C.O. 1956 of 2021 is dismissed.

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.)