

05.01.2023
Item No.6
Ct. No.7
CHC
(disposed of)

C.O. 2436 of 2022

Md. Ali Ansary
Vs.
Tahir Ansary & anr.

Mr. Chittapriya Ghosh,
Ms. Komal Singh
...for the petitioner

Mr. Nonigopal Chakraborty
...for the o.p. no.1

Subject-matter of challenge in this case is against the rejection of a prayer for amendment, proposed by the petitioner/plaintiff, before the commencement of trial of the suit.

Admittedly, this is a suit for declaration so that the alleged deed of gift dated 16th August, 2019, may be declared to be *non est*, on the grounds disclosed in the pleadings submitted by the petitioner/plaintiff.

Mr. Chittapriya Ghosh, learned advocate appearing for the petitioner disputes with the impugned order submitting that the court below has become highly sensitive with the use of the words, proposed in the schedule of amendment, which should not have been critically viewed, bearing in mind that the proposed amendment would not cause any change in the nature, and character of the suit.

It is thus submitted by the petitioner that when declaration has been proposed to be obtained regarding deed of gift dated 16th August, 2019, to be *non est* for the reasons disclosed therein, the use of the word revocation is subject to the provisions of the law operative over the field.

Per contra, Mr. Nonigopal Chakraborty, learned advocate appearing for the opposite party no.1 submits that the entire exercise of the petitioner is to fill up the lacuna in the pleadings already submitted by the petitioner/plaintiff, upon viewing the defence already set up in the written statement filed by the opposite party no.1/defendant. Such proposed prayer of amendment, according to the opposite party no.1, was very much within the knowledge of the petitioner/plaintiff, and the same could not be proposed earlier purposefully for the specific interest of the petitioner/plaintiff.

Having considered the submission of both sides, it appears that in a suit for declaration, a deed of gift allegedly executed on 16th August, 2019, has been sought to be declared void, inoperative, *non est* etc.

Upon perusal of the schedule of the proposed amendment, it appears that consequential effect of the alleged deed of gift has also been challenged, while proposing declaration that the deed of gift dated

16th August, 2019, be null and void. The alleged deed of gift sought to be declared inoperative, has left some impact in the record of right, published for the purpose. The presumption of possession follows from the record of right is rebuttable one, and as such it is subject to the decision of the trial to be returned by the court below, if at all needed.

The use of words “collusive”, “void” and “revocation” as disclosed in the schedule of the proposed amendment would not change the nature and character of the suit in any manner whatsoever. When there has been no commencement of trial, this Court believes that in the event of proposed amendment being allowed, there will be no prejudice caused to the opposite parties, because the opposite parties will be given sufficient opportunities to file additional written statement in all fairness of the trial.

The revisional application is thus disposed of upon setting aside the impugned order dated 1st July, 2022, passed by learned Civil Judge (Senior Division), Purulia, in Title Suit No.212 of 2020.

The proposed amendment be allowed subject to the payment of cost of Rs.5,000/- (Rupees Five Thousand) to the opposite parties, to be paid by the petitioner within fortnight from the date of communication of this order to the court below.

Subject to the deposit of cost, copy of the amendment plaint may be furnished before the court below upon supplying a copy well in advance to the learned advocate representing the defendants in the court below.

The additional written statement may be filed two weeks thereafter.

The proposed amendment may be considered, while framing issues of the suit.

Parties are directed to communicate this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)