

S/L 8
28.02.2023
Court No.652
SD

CO 2077 of 2021

Sri Haradhan Samanta
Vs.
Sudarsan Maity & Ors.

Mr. Dyutiman Banerjee
Mr. Salil Kr. Maiti
Ms. Pinki Saha

...for the Petitioner.

Mr. Tapan Mahapatra
Mr. Munshi Ashiq Elahi

...for the Opposite Party No.1.

Being aggrieved and dissatisfied with order dated 29.9.2021 passed by the learned Civil Judge (Junior Division), Haldia, Purba Medinipur in Title Suit No.32 of 2008, present revisional application has been preferred.

By the impugned order the learned court below was pleased to reject the plaintiff's prayer for amendment of plaint filed under Order VI Rule 17 of the Code of Civil Procedure. The petitioner contended that the petitioner as plaintiff filed the aforesaid suit for declaration that the deed in question is loan in substance and not an out and out agreement for sale, against the opposite parties.

The case made out by the plaintiff in the plaint is that father of the petitioner, namely, Adhar Chandra Samanta obtained loan from the defendant no.1 who is a money lender and used to lend money on the basis of the mortgage. Accordingly, the predecessor of the petitioner due to financial hardship, obtained a loan after executing a deed in

favour of the said defendant no.1. Subsequently, when the plaintiff requested the defendant no.1 to reconveyance the property after repayment of the loan amount, the defendant no.1 refused to do the same. Accordingly, the said suit was filed and opposite party no.1 contested the said suit by filing written statement, denying all material allegations. In connection with the said suit, the plaintiff filed an application under Order VI Rule 17 of the Code of Civil Procedure praying for amendment of the plaint contending that plaintiff was unaware of the registered deed being no.3314, 3315 dated 13.10.2012 executed by defendant no.1 in favour of defendant nos.4 and 5. So he could not mention the abovementioned deeds in the plaint and also could not challenge the same. Therefore, the plaintiff filed the said petition for amendment in order to incorporate the said fact. Learned court below after hearing both the parties was pleased to reject the same.

Learned counsel appearing on behalf of the petitioner submits that the trial court acted illegally and with material irregularity in rejecting the said application of the petitioner holding that the subject matter of amendment application is barred by limitation and aforesaid transaction was entered during the pendency of the suit and learned court below also erred in holding that the proposed amendment, if allowed, it will change the nature and character of the suit and failed to consider the provision as laid down in Section 52 of the Transfer of Property Act.

Petitioner in this context has relied upon judgments in the case of Prem Singh and Ors. vs. Birbal and Ors., Kewal Krishan vs. Rajesh Kumar and Ors. and Meharchand Das vs. Lal Babu Siddique and Ors.

Learned counsel appearing on behalf of the defendant/opposite party submits that he does not have any objection in respect of prayer for amendment mentioned in item no.1, 2 and 4 of the schedule of amendment application but he has strong objection against the prayer for amendment as proposed in item no.3 of the schedule of the amendment petition.

I have perused the order passed by the learned court below wherein learned court below has specifically observed that the plaintiff impleaded defendant no.4 and 5 as party to this suit by way of petition under Order 1 Rule 10(2) of the Code dated 01.3.2013. The plaintiff specifically pleaded in that application that he came to know about the registered deeds dated 13.10.2012 and for which he has made the said application. Accordingly, it is admitted position that the plaintiff had knowledge about the aforesaid two deeds being no.3314 and 3315 in favour of defendant no.4 and 5 at least on 01.3.2013, the date on which the plaintiff filed the aforesaid application under Order 1 Rule 10(2). Accordingly the plaintiff has no right to challenge the said deeds after lapse of so many years.

In this context, learned counsel appearing on behalf of the petitioner submits that by way of amendment, he is

not seeking to incorporate any prayer for declaration that the said deeds are void and as such, the question of limitation does not arise in the present case as by way of amendment he only wants to incorporate that the said deeds are illegal, void and the defendant no.1 had no authority to execute the said deeds and the said deeds were never read over and explained to the vendors nor any consideration was passed at the time of execution of those deeds.

When it is admitted position that the plaintiff/petitioner has lost his right to pray for a declaration that the said deeds are void in view of the provisions of the Limitation Act, such averments as made in item no. 3 of the schedule of amendment petition has also become redundant in view of the said fact.

Furthermore, on perusal of the prayer of the plaint, it appears to me that the main controversy between the parties in the suit is in respect of the transaction as to whether the deed in question in favour of defendant no.1 is loan in substance or it is an out and out agreement of sale deed. It appears to me that in order to adjudicate said controversy in the said suit, the proposed amendment as made in item no.3 of the schedule of amendment application is not at all necessary. Only such portion of amendment needs to be incorporated which are necessary for complete adjudication of the suit. Here in item no. (3), the proposed amendment as sought for is not imperative for proper and effective adjudication of the suit and on the contrary proposed amend

if allowed, may cause prejudice to the opposite parties, who might have acquired valuable right due to lapse of time. Accordingly, I find nothing to allow the said proposed amendment mentioned in item no.3 of the schedule of amendment application.

In view of the above, plaint is amended in terms of item no.1, 2 and 4 of the schedule of amendment application and plaintiff is to file amended plaint accordingly. However, petitioner's prayer for amendment in respect of item no.3 of the schedule of amendment application is refused.

Accordingly, CO 2077 of 2021 is disposed of.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)