

06.10.2023

Item No. 1

Ct. No. 7

PG

C.O. 2559 of 2022
Smt. Aloka Naskar & Ors.
Vs.
Sri Tapas Bodak & Ors.

Mr. Avishek Das
Mr. Shanuak Mukhopadhyay.....for the petitioners

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
Ms. Dipanwita Ganguly
Mr. Kaustav Bhattacharya
Ms. Sinjini Chakraborty.....for the O.P. Nos. 1 & 2

This application under Article 227 of the Constitution of India is at the instance of the substituted plaintiffs and is directed against an order dated 1st August, 2022 passed by the learned Civil Judge, Junior Division, 5th Court, Howrah in Title Suit No. 17002 of 2014.

Though three applications were decided by the impugned order but the petitioners are aggrieved against first part of the order, whereby the application for amendment of plaint was rejected. The learned trial Judge after holding that the proposed amendment does not change the nature and character of the suit, rejected the application for amendment only on the ground that the trial has commenced and the application has been filed at a belated stage.

Mere framing of issues and tendering of evidence- in-chief of the first witness of the plaintiffs does not amount to commencement of trial. Therefore, the finding of the trial Judge that the trial has commenced cannot be supported. The original plaintiffs have prayed for a declaration that the sale deeds dated 12th November, 2012 and 9th June, 2023 in favour of the principal defendant nos. 1 to 3 are void, forged and illegal and the same are not binding upon the plaintiffs.

Upon the death of the original plaintiff, his heirs being the present petitioners were substituted sometimes in the month of August, 2016. After being substituted, the substituted plaintiffs filed an application under Order VI Rule 17 praying for incorporating certain facts with regard to alleged execution of a deed of gift dated 17th December, 2014 by their predecessor in interest.

In course of hearing of this application, upon a query of the Court, learned advocate for the petitioners in his usual fairness submitted that the deed of gift do not pertain to the suit property.

In view thereof, this Court is of the considered view that the facts regarding execution of the deed of gift by their predecessor in interest cannot be said to be relevant for the purpose of effective adjudication of the disputes involved in the suit.

Though the reasons for rejecting the application merely on the ground of delay is not supported by this Court but in view of the observations made hereinbefore that the proposed amendments are not necessary for the purpose of effective adjudication of the disputes involved in the suit, this Court is not inclined to allow the prayer for amendment of plaint.

In view thereof, the order rejecting the application under Order VI Rule 17 dated February 10, 2021 is not interfered with by this Court.

Accordingly, C.O. 2559 of 2022 stands dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties expeditiously upon usual formalities.

(Hiranmay Bhattacharyya, J.)