

27.9.2023
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Ct. no. 652
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C.O. 3137 of 2019

Ranjan Das
Vs.
Dipankar Das & ors.

Mr. Ramprokash Banerjee ...for the Petitioner

Mr. Shyamal Kr. Bhattacharji ...for the O.P. no. 1

This is an application under Article 227 of the Constitution of India which has been preferred against the order dated 10th January, 2019 passed by the learned Civil Judge, Senior Division, 2nd Court, Baruipur, South 24 parganas in Title Suit no. 140 of 2016.

The petitioner contended that the opposite party no. 1 as plaintiff filed aforesaid suit for partition against the petitioner herein and proforma opposite party nos. 2 to 6 claiming 1/7 share in the suit property. The said suit was registered and numbered as Title Suit no. 120 of 1998 but subsequently it was transferred and renumbered as Title Suit no. 140 of 2016. The petitioner and proforma opposite party nos. 2 to 6 herein appeared in the said suit and filed written statement and additional written statement denying allegations made in the plaint.

It is alleged by the petitioner that in the said suit, the opposite party no. 1 herein on five occasions, filed application for amendment under Order VI Rule 17 of the

Code of Civil Procedure (hereinafter called as Code) but all such applications had been rejected earlier as not pressed. In the said suit, when the evidence has already been started, the opposite party no. 1 being the plaintiff came out again with the present application for amendment of plaint. The petitioner and the proforma opposite parties contested the said application by filing written objection. The learned court below allowed the said application for amendment by an order dated 11.12.2006. Being aggrieved by that order dated 11.12.2006, the petitioner and the proforma opposite parties herein preferred a Civil Revisional application being C.O. 129 of 2007 before this Hon'ble court and this court disposed of said application by setting aside the said order dated 11.12.2006 and passed a direction to rehear the amendment application afresh and to pass a reasoned order. After such direction passed by this Hon'ble Court, the court below had taken up the amendment application filed by the opposite party no. 1/plaintiff afresh and by the impugned order, the court below was pleased to allow such amendment application.

Being aggrieved by the order impugned, learned counsel for the petitioner submits that the court below has exceeded its jurisdiction and while passing the order impugned, he ought to have considered that in view of proviso to Order VI rule 17 of the Code, the amendment application ought not to have allowed since the trial has

already been commenced. Furthermore, the court below failed to consider that prior to present amendment application, the plaintiff filed similar amendment petition on five occasions and the said applications were rejected being not pressed and as such, the present application is barred under Section 11(4) of the Code.

Learned counsel for the opposite party no. 1 submits that the suit was filed in the year 1998 and as such the proviso, as laid down in Order VI rule 17 of the Code is not applicable in the present context in view of Section 16(2) (b) of the Amendment Act of 2002. In this context he relied upon Apex court judgment in **State Bank of Hyderabad Vs. Town Municipal Council** reported in **(2007) 1 SCC 765**. He further submits that this is a suit for partition and the plaintiff by way of amendment only tried to bring all the joint properties in the common hotchpot so that suit may not be barred by partial partition. He further contended that under the proviso to Order VI Rule 17 of the Code, all amendments should be allowed which are required for adjudication of the real controversy between the parties.

I have considered the submissions made by both the parties. It appears that while disposing the application being C.O. 129 of 2007, this court observed that the earlier order by which the amendment application was allowed vide order dated 11.12.2006, was very cryptic one and was not supported by any reason

and as such this court was pleased to direct the court below to hear the application afresh and to pass a reasoned order. The court below as per direction of this Hon'ble Court, passed the impugned order wherein he has specifically observed that this is a suit for partition and all the common ejmali properties to which the commonality of interest is involved, should be included and where the commonality of interest is not involved, will be excluded and he further observed that for providing substantial justice, such amendment is required to be allowed. However, as the plaintiff has filed the application at a belated stage, the court below allowed the said application with a cost of Rs. 1000/-.

Needless to say that the scope of exercising supervisory jurisdiction under Article 227 of the Constitution of India is limited and is not expected to interfere with the orders of the Court below as a matter of routine. This power cannot be taken as right of another appeal to the aggrieved party. The observation of Trial court that the instant suit being a suit for partition, all common ejmali properties to which commonality of interest is involved needs to be included, has not resulted in any gross or manifest failure of justice nor has there been any illegality or perversity committed by the court below while passing the impugned order, so that interference of this court has become unavoidable. on the contrary, basic test which must govern grant or refusal of

amendment is whether such amendment is necessary for determination of real question in controversy and/or for proper and effective adjudication of the suit. Therefore, I find nothing to interfere with the observation made by the trial court, since the order impugned is neither perverse nor amounts to overstepping of his jurisdiction.

In such view of the matter, C.O. 3137 of 2019 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.)