

10.10.2023
Sl. No.24(DL)
srm

C.O. No. 2873 of 2023
Tapas Kumar Bera & Anr.
Versus
Subhasini Rana & Ors.

Mr. Pradip Kumar Das,
Mr. Chirantan Sarkar

...for the Petitioners.

Mr. Amit Baran Dash
Ms. Ankana Sarkar

...for the Opposite Party No.5.

The revisional application arises out of an order dated June 19, 2023 passed in Title Suit No.06 of 2011 by the learned Civil Judge (Junior Division), 1st Additional Court, Contai at Purba Medinipur.

By the order impugned, the learned court below allowed an application for addition of one Parul Rani Pahari. The addition was allowed upon consideration of the fact that some of the plaintiffs had sold their shares to the said added party. Such addition was allowed upon payment of cost of Rs.10,000/-. By the same order, the learned court rejected an application for amendment of the plaint.

It appears from the schedule of amendment that the petitioners wanted to correct the quantum of land and insert the LR dag number. The reason was that when the

predecessors of the petitioners had filed the suit, the proper RS and LR dag numbers had not been inserted. The LR Dag number was allotted later.

The learned court below rejected the said application on the following grounds:-

- (a) The suit was filed originally in 1984.
- (b) As the amendment was hit by the proviso to Order VI Rule 17 of the Code of Civil Procedure, the amendment was belated. The plaintiffs could not prove that in spite of due diligence such fact could not be brought on record.
- (c) In respect of the description of the plot which was originally Plot No.2259, an amendment was incorporated and a correction was made in respect of the suit plot to Plot No.2257
- (d) Interlocutory petitions had been disposed of between the parties.
- (e) A local investigation was also allowed by the learned court.
- (f) After a lapse of many many years, the amendment for insertion of the fact that the suit plot being RS Plot No.2257 was divided into three sub-plots, was sought to be incorporated.

(g) That local investigation had been directed and the application for amendment if allowed, would interfere with the directions upon the learned commissioner with regard to the points for local investigation.

Mr. Dash, learned Advocate appearing on behalf of the opposite party No.5 supports the order of the learned court below and submits that the LR settlement was done long ago. The fact that the RS Dag No.2257 had been divided into *bata* plots was already known to the plaintiffs. The plaintiffs were dragging the suit for the past 40 years. That the amendment sought for, if allowed, would change the nature and character of the suit and the scope of the suit would be enlarged.

Having heard learned Counsel for the respective parties, this Court is of the view that by the amendment application, the plaintiffs wanted to incorporate the fact that RS Plot No.2257 was divided into three '*bata*' plots and the plaintiffs had a share in LR Plot No.2257/5826. The said *bata* plots were created out of RS Plot No.2257 and as such the defendants were the trespassers also in respect of the share of the plaintiffs in the said *bata* plot.

Mr. Dash has raised a question with regard to the factual correctness of the statements made in the amendment

application. Mr. Dash further contends that originally the suit was filed in respect of RS Plot No.2259. The plaintiffs themselves were not confident about their cause of action and identity of the plot from which they seek eviction of the trespassers.

This Court is of the view that the correctness of the statements made in the amendment application, right, title and interest of the plaintiffs over LR Plot No.2257/5826, the status of the defendants in respect of the said plot, shall be decided at the trial. If the plaintiffs fail to prove their case on the basis of oral and documentary evidence that they have right, title and interest over the said plot and the defendants were illegally in possession of LR Plot No.2257/5826, which was allegedly derived from RS Plot No.2257, the suit shall fail.

This Court also finds that the learned court below erred in holding that the amendment was hit by the proviso to Order VI Rule 17 of the Code of Civil Procedure, as the suit was a pre-amendment suit and was filed in 1984.

Under such circumstances, at the stage of allowing the amendment application, the learned court below was not required to go into the factual correctness of the statements.

The portion of the order by which the amendment application was rejected, is set aside. The plaintiffs shall file

the amended plaint within two weeks after reopening of the court after the puja vacation. The defendant shall file the additional written statement within four weeks from receipt of the amended plaint.

The revisional application is allowed.

The cost which has been imposed by the learned court below shall be paid in view of the delay caused in filing the amendment application. This Court is of the view that an amendment can be allowed belatedly as long as the defendants do not suffer serious injury which cannot be compensated with costs. In such view of the matter, the prayer of the petitioner for deletion of the cost is not entertained.

The learned court below shall dispose of the suit within a period of six months from the date of reopening of the court after Puja Vacation, without granting unnecessary adjournments to either of the parties.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)