

2.2.2023
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Ct. no. 652
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C.O. 2490 of 2013

Durga Ghosh & Ors.
Vs.
Dr. Ajoy Hazra & Ors.

Mr. Iftekar Munshi ...for the petitioners

Mr. Kamlesh Jha
Ms. Manika Pandit ...for the opposite parties

Affidavit of service filed by the petitioner is taken on record.

Being aggrieved and dissatisfied with the order dated 29.4.2013 passed by the learned Civil Judge, Junior Division, 4th Court, Howrah in Title suit no. 156 of 2000, the present application under Article 227 of the Constitution of India has been preferred.

The petitioner contended that the opposite party herein had filed a suit for declaration that the deed of settlement dated 4th February, 1996 is a fraudulent deed and prayed for cancellation of the said deed and also for injunction. The petitioner herein as defendant appeared in the said suit and filed written statement. The opposite party filed an application on 10th January, 2013 under Order VI Rule 17 for inserting certain facts in the plaint thereby trying to change the nature and character of the suit. The petitioner filed written objection against the

amendment petition contending that the proposed amendment, if allowed, will change the nature and character of the suit and further, the said application has been filed in complete violation to the proviso to order VI, Rule 17 of the Code. Learned court below after hearing both the parties, was pleased to allow the said application by the impugned order dated 29.4.2013.

Learned counsel for the petitioner further submits that the proposed amendment has been filed after completion of the evidence of the parties and as such court below ought to have rejected the prayer for amendment. Furthermore, the learned court below has failed to appreciate that proposed amendment if allowed, will change the nature and character of the suit and he has allowed the same without assigning any reason. He further submits that the suit was filed in the year 2000 and after 13 years, the proposed amendment application was filed only to misuse the provision of law. Accordingly he has prayed for dismissal of the revisional application.

On perusal of plaint it appears that plaintiff's main contention is that their father Tinkari Das was the original owner of the suit property and after his death his wife Indubala and two daughters i.e. plaintiff and defendant no. 1 became owner of suit properties under the Hindu Succession Act. Plaintiff's further case is subsequently she came to know that said Indubala before death executed a deed of settlement in favour of

defendant no. 1/younger daughter, which deed plaintiff has challenged in his suit. It is not the case of defendant that original owner Tinkari died before introduction of Hindu Succession Act, 1956 or Indubala, plaintiff and defendant no. 1 are not his legal heirs. On perusal of written statement it appears that real dispute in the suit is according to defendants aforesaid deed of settlement executed by Indubala in favour of defendant no. 1 is legal valid, which the plaintiff has challenged and prayed as void. In the written objection against amendment petition defendants have made only evasive denial and has not stated how they are going to be prejudiced, if the proposed amendment is allowed. Accordingly the subject matter of proposed amendment is already in the pleading and the question of changing nature and character of the suit after proposed amendment does not arise because even if proposed amendment is allowed, suit will remain a suit as to whether aforesaid deed of settlement executed by Indubala is liable to be declared as void deed or not and I find nothing wrong in the observation of trial court that the proposed amendment is formal in nature and such observation, in view of the above does not call for any interference by this court. Court below has already given liberty to the defendants to file additional written statement and in addition to that since the amendment has been filed at a belated stage after closing of evidence, if opportunity to examine, cross-

examine and reexamine of the witnesses already examined, to the extent of amended plaint and on the contents of proposed additional written statement be given, neither party will have a cause to prejudice.

Accordingly, C.O. 2490 of 2013 is dismissed. However, this dismissal order will not preclude the defendants to file additional written statement as ordered in the impugned order nor such order will preclude parties to examine, cross-examine and/or reexamine the witnesses already examined in the suit to the extent of amended plaint and proposed additional written statement, if any, to be filed by defendant.

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

(Ajoy Kumar Mukherjee, J.)