

22.08.2023
Sl. No.18(DL)
srm

C.O. No. 2976 of 2022
Sri Gour Chandra Nandy
Versus
Sri Gobinda Chandra Nandy & Ors.

Mr. Arijit Bardhan,
Mr. Sayan Sinha,
Mr. Adil Naser,
Mr. Soham Kumar

...for the Petitioner.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das

...for the Opposite Party No.1.

The revisional application has been filed challenging an order dated August 29, 2022 passed by the learned Additional District Judge, 4th Court, Howrah, in Title Appeal No.128 of 2016.

By the order impugned, the application for amendment of the written statement was rejected. By the said application, the already existing facts were sought to be clarified. Some subsequent events with regard to the outcome of the proceedings in Title Suit No.57 of 2006 which was filed by the mother of the parties, namely Bela Rani Nandy challenging the deed of gift on which the plaintiff based his claim, was sought to be brought on record. When the mother withdrew the suit,

the petitioner sought to be transposed as a plaintiff. The petitioner was a defendant in the suit. Such prayer was rejected. The matter came up to the High Court. The petitioner's prayer was rejected and the matter went up to the Hon'ble Apex Court. The petitioner was also unsuccessful. These facts were sought to be brought on record in order to demonstrate that the petitioner had all along opposed the plaintiff's right, title and interest in respect of the suit property on the basis of an alleged deed of gift. Subsequently, another co-sharer filed a suit in 2019. The said suit was also a subsequent suit which was filed after the Title Suit No.161 of 2006 had been dismissed.

This Court finds that the facts relating to the petitioner's suit, sought to be incorporated by way of an amendment of the written statement were already available in the written statement. The statements with regard to the petitioner's suit were more or less clarificatory and not relevant for determination of the real controversy between the parties. Hence paragraphs 19(x) to 19(xii) of the schedule of amendment are not required to be incorporated in the written statement. They are only elaborations of the facts already pleaded.

With regard to 19(xiii) to 19(xix), this Court is of the view that these are subsequent events which are not on record.

According to the petitioner, such amendment would be necessary in order to enable the appeal court to adjudicate the real controversy and also to bring on record subsequent events which may have a bearing on the conduct of the defendants in the other proceedings.

Mr. Mukherjee, learned Advocate appearing on behalf of the opposite party No.1 vehemently opposes the said prayer. He submits that the subsequent suit filed by the heirs of Madan Chandra Nandy being Title Suit No.377 of 2019, was not pending, as the plaint was rejected on the ground of the suit being barred by limitation. The amendment suffers from suppression. The amendment did not disclose the correct facts.

Heard the parties.

The order impugned suffers from material irregularity, inasmuch as, the learned lower appellate court found that the facts could be brought on record by way of evidence by producing certified copies of the relevant deeds and orders. The learned lower appellate court failed to appreciate that unless such facts were not available in the pleadings, it would not be possible to adduce evidence on issues which were outside the pleadings.

Mr. Mukherjee's contention on the correctness or the veracity of the statements made in the application for amendment with regard to the suit filed by the Madan's heirs,

deal with the merits of the amendment. The contention of Mr. Mukherjee that the averments made in the amendment application were not correct, are also question of merit. Mr. Mukherjee's client is at liberty to bring all those points on record by filing a replication to the amended written statement to be filed by the petitioner.

Thus, paragraphs 19(xiii) to 19(xix) of the schedule of amendment are allowed.

The petitioner shall file amended written statement within two weeks from date. The plaintiff/appellant will file a replication/re-joinder within two weeks thereafter.

The learned lower appellate court shall look into the averments made by the parties and the contents of the replication, while deciding the appeal.

It is made clear that the appeal shall continue in accordance with law and be disposed of within a period of four months from completion of pleadings.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)