

21.12.2023
Sl. No.20(DL)
srm

C.O. No. 3150 of 2023
Rofijul Purkait & Anr.
Versus
Smt. Sujata Koley & Ors.

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Anirban Saha Ray
...for the Defendants/Petitioners.

Mr. Kaustav Bhattacharya
...for the Opposite Party No.1/Plaintiff.

By this revisional application, the order dated August 11, 2023 passed by the learned Civil Judge (Junior Division), 5th Court at Howrah, in Title Suit No.1333 of 2022 has been challenged.

It is the contention of the petitioners that the learned court wrongly allowed an amendment of the plaint without taking into consideration that such amendment would change the nature and character of the suit. It is contended by the petitioners that the suit is for permanent injunction without any declaration of title. Thus, the facts with regard to the pendency of Title Suit No.533 of 2022 before the learned Civil Judge (Senior Division), 3rd Court at Howrah, were irrelevant considerations for the present suit.

Mr. Bhattacharya, learned Advocate appearing on behalf of the defendants urges this Court to take into account the fact that the plaintiff was blowing hot and cold. The suit was filed initially claiming right, title and possession over 47 decimals of land as per the settlement records, whereas in the amendment, the plaintiff wanted to amend such area to 12 decimals.

Mr. Kaustav Bhattacharya, learned Advocate appears on behalf of the opposite party No.1/plaintiff and submits that the amendment will not change the nature and character of the suit. The amendment intended to incorporate the correct quantum of land over which the plaintiff claims right, title and possession and also the fact that another suit was pending with regard to the lands in question. The averments of the parties in the said suit were necessary to be brought on record for proper and complete adjudication of the disputes between the parties.

Having considered the rival contentions of the parties, this Court is of the view that correction of the quantum of land from 47 *satak* to 12 *satak* is a formal correction which does not change the nature and character of the suit. If the contention of Mr. Bhattacharya is taken to be correct that by showing 47 *satak* the plaintiff was enjoying injunction over the entire

property, the defendants are always at the liberty to approach the learned court for modification of the order of injunction. Secondly, by other amendments the plaintiff wanted to introduce the factum of pendency of a suit and the contentions of the parties in the said suit. The plaintiff is entitled to incorporate all such facts, which according to the plaintiff, may be relevant for adjudication of the case.

Mr. Bhattacharya submits that the averments made by one of the parties in another suit in which Mr. Bhattacharya's clients are not parties, will not be binding on the defendants and as such, such facts should not be taken into consideration at all while deciding the present suit.

This Court is of the view that the correctness of the statements made in the said paragraph, with regard to the averments made by the parties in another suit, are not to be decided while allowing an application for amendment. Only factual aspects are allowed to be incorporated. The truth, veracity and evidentiary value of such statements, are to be decided in the final trial. The merits of the amendment are not relevant while deciding such application.

The additional written statement shall be filed within four weeks from the date of communication of this order. The suit shall proceed, in accordance with law.

The claim and counterclaim of the parties shall be decided on merits.

Under such circumstances, the revisional application is 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.)