

15.5.2023
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Ct. no. 652
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**C.O. 3688 of 2018
With
CAN 1 of 2022**

**Sri Sadananda Ganguli
Vs.
Sri Satyananda Ganguli & Ors.**

Ms. Usha Maity ...for the petitioner

Mr. Sourabh Guhathakurata
Ms. Nilanjana Sarkar
Mr. Prabhleen Bharara ...for the Opposite parties

This is an application under Article 227 of the Constitution of India against the order no. 13 dated 25th July, 2018 passed by the learned Civil Judge (Senior Division), First Court at Barasat, North 24 parganas in Title Suit no. 13736 of 2014.

The petitioner/defendant contended that the opposite party no. 1/plaintiff has filed aforesaid suit against the petitioner and proforma defendant nos. 2 to 7 for declaration, partition and injunction. The petitioner herein as defendant appeared in the said suit and filed written statement denying all material allegations. The petitioner contended that it appears from page 17 of the service copy of the plaint that in the first sentence in paragraph no. 2, a portion was left blank after “(i)to()”. This has also been pointed out by defendant /petitioner in his written statement that keeping the said

portion in affidavit as blank plaintiff has practically stated that contents of only paragraph 1 of the plaint are true to his knowledge. However, subsequently, the petitioner herein obtained certified copy of the plaint and it appears from the certified copy that figure “9” was inserted in the blank portion at the end of first sentence of paragraph 2 at Page 17 of the plaint and curiously there is no initial in the context of such incorporation by the commissioner concerned. The petitioner has reason to believe that the said incorporation is subsequent to the filing of the plaint and also subsequent to filing the written statement by the petitioner and the petitioner is unaware of any leave obtained from the learned court, in support of such incorporation. Accordingly petitioner herein prayed for passing an order directing the office of the court to make an enquiry about the incorporation of figure “9” in the plaint as above.

The said application came up for hearing before the court below and learned court below after hearing both the parties, was pleased to reject the said application on the ground that the application is devoid of any merit.

Learned counsel for the petitioner submits that the court below did not consider the grievance of the petitioner. He ought to have ordered for an enquiry instead of rejecting the said application. Accordingly, the petitioner has prayed for setting aside the order

impugned and to pass necessary direction. In this context, the petitioner has relied upon the judgments reported in (2002) 2 SCC 445, 1956 Cal 496, AIR 1971 SC 1923, AIR 2005 SC 3353, AIR 2004 SC 3229 and AIR 1970 SC 652.

Learned counsel for the opposite party/plaintiff submits that it was merely a mistake on the part of the concerned law clerk to incorporate that figure “9” in the copy of plaint which was served to the defendant no. 1/petitioner. In fact, before filing the application, in the court below and before swearing affidavit figure “9” was duly incorporated in the plaint otherwise, it would have been pointed out by oath commissioner before swearing affidavit. This will also reflect from the fact that in the written statement, the defendant has taken the same plea. Accordingly, the question of making enquiry does not arise in the present case. The defendant no. 1/petitioner at best, would have prayed for supplying a corrected copy of the plaint, as such irregularity is always curable but with an ill motive to cause delay in the partition suit which is pending for a considerable period of time, he has filed the present application.

I have considered the submissions made by both the parties. The annexure shows that the copy of the plaint which was served to the defendant/petitioner, at page 17 of the plaint in the first sentence at paragraph 2, the Figure “9” is missing. However, the certified copy of

the plaint which has been filed by the petitioner herein goes to show that in same paragraph 2 in the affidavit portion at page 17 it runs as “that the statement made in paragraphs 1 to 9 of the instant application are true to the best my knowledge and rests are my humble submission before the learned court below”.

In view of above, there is nothing to show that the said figure “9” has been incorporated in the plaint after filing of the suit or after filing of the written statement, There is also no reason to believe by the petitioner that it has been tampered subsequently after swearing of affidavit nor there is any evidence apparent on the record to that effect. At best, it can be said that the copy of page 17 of the plaint which was served to the defendant/petitioner, was not duly filled up or corrected. Accordingly, the order impugned does not call for any interference.

However, before parting with the order, I must say that the defendant is supposed to get true copy of the plaint and document that is required to serve upon him. In a civil suit copy of a document has a major role to play for the opposite party. By the copy of the document/pleading, plaintiff or defendant during the proceeding desire to be aware of all the material facts and documents, the other party may possess. Copy of a document means copy made from a primary document without alteration or omission of the contents of an

original document. Order V, rule 2 provides that every summon shall be accompanied by a copy of the plaint. Here “copy” means copy of plaint made from primary document without any omission or alteration. In fact summon not accompanied by a true copy of plaint cannot be regarded as due service as provision laid down in rule 2 of order V is mandatory. Though it is true that such omission is mere irregularity which is curable but at the same time the lackadaisical/ casual approach on the part of plaintiff in respect of compliance of order V rule 2 cannot be encouraged for any reason as the other party is supposed to contest the suit on the basis of the copy that are being served upon him and if the copy is not properly filled up or properly corrected, then it may cause prejudice to the other side. Accordingly, though this present application is liable to be dismissed on merit but the plaintiff is liable to pay cost to the defendant, for not showing diligence in complying order V, rule 2 in it’s proper perspective.

In view of above, C.O. 3688 of 2018 is dismissed. However, plaintiff will pay a cost of Rs. 5,000/- along with a corrected copy of plaint to the defendant no. 1/petitioner within a period of four weeks from the date of communication of the order. On such payment and service of copy of plaint by the plaintiff to the defendant no. 1/petitioner, further proceeding of the suit shall resume.

The case laws cited by the petitioner is not applicable in the present context as in the present case, there is nothing to show that the incorporation of the figure in plaint has been made after filing the plaint or after swearing the affidavit.

Since the case is pending for a long time, the court below is directed to make every endeavour for expeditious disposal of the suit and to conclude the entire proceeding of the suit preferably within a period of one year from the date of communication of the order.

C.O. 3688 of 2018 is accordingly dismissed.

Pending application, if any, stands disposed of.

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.)