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C.O. 3197 of 2022

**Rita Dey nee Dutta
Vs
Kurban Sahaji & Ors**

Ms. Anita Kaunda,

... For the petitioner.

The subject matter of challenge in this case is against the rejection of an application for amendment.

By the proposed amendment, a prayer for mandatory injunction was intended to be incorporated in the pleadings for the demolition of a Kutcha-Pucca structure, allegedly made by defendant No. 14 to 17. The alleged construction could be revealed from the cross-examination of PW1. It is a suit of 2005. The date of argument has already been set for by the Court below.

Ms. Anita Kaunda, learned advocate appearing for the petitioner disputes with the impugned order submitting that the petitioner inherited the suit property, and the construction allegedly raised, for which mandatory injunction has been proposed for demolition of the same, has been undertaken subsequent to the evidence of plaintiff's witness.

Upon perusal of the impugned order, it appears that plaintiff is not in actual possession of the suit

scheduled property. The moment when the construction was raised, no endeavour was there to resist the construction, allegedly raised. More so, there has been no local inspection proposed by the petitioner to reveal the alleged construction raised by the opposite parties.

In view of the mischief provided to Order 6 Rule 17 CPC, there has been no explanation offered as to why such amendment was belatedly proposed.

To seek mandatory injunction for the demolition of alleged construction, there has to be some cogent and sufficient circumstances, which must be something more and more grave in nature in justification of the grant of mandatory injunction.

Nothing of the sort is found to be ascertained in the proposed prayer for mandatory injunction for the demolition of the alleged construction.

Presumably the plaintiff has taken the chance of cross-examination of defendants witnesses already examined by the other side, and during the cross-examination, such point may be presumed to have been gone into. When the suit has already set for argument, this Court is not inclined to interfere with the impugned order, which has been recorded upon due exercise of discretion, lawfully vested to the Court below, and there is nothing revealed that such discretion has been improperly exercised by the Court

below.

For the reasons disclosed hereinabove, there is nothing to interfere with the impugned order.

However, petitioner is given liberty to agitate such points at the time of final hearing of this case. In an appropriate case being made out, subject to the discretion of the Court below, the proposed relief, if necessary, may be remolded it in accordance with law.

Petitioner is directed to make communication of this order to the learned court below.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)