

26.9.2023
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Ct. no. 652
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C.O. 4117 of 2019

Aurobindu Mandal
Vs.
Pintu Mondal & ors.

Mr. Soumen Das
Mr. Abhijit Pal ...for the Petitioner

Mr. Prithwiraj Biswas ...for the O.P. no. 1

Being aggrieved and dissatisfied with the order no. 37 dated 9th August, 2019 passed by learned Civil Judge, (Junior Division), 2nd Court, Basirhat, North 24 parganas in Title Suit no. 111 of 2018, present application under Article 227 of the Constitution of India has been preferred.

The petitioner contended that the petitioner as plaintiff instituted aforesaid suit against the opposite parties for injunction. In the said suit, the defendant no. 1 appeared and filed written statement. Thereafter, the opposite party no. 1 herein as defendant No.1 preferred an application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure seeking amendment of the written statement. Learned court below by the impugned order, was pleased to allow the defendant's application seeking amendment of the written statement.

Being aggrieved by the order, learned counsel for the petitioner /plaintiff submits that the order impugned

is bad in law and the court below has ignored the fact that by way of amendment, the defendant sought to introduce completely new pleading and if such amendment is allowed, it will completely change the status of the parties in the suit. The said schedule of amendment is voluminous and if allowed, it will create new defence for the defendants which is not permissible in the eye of law. Accordingly, the petitioner has prayed for setting aside the order impugned.

Learned counsel for the opposite parties submits that the proposed amendment is elaboration of the fact which has already been disclosed in the written statement and no new or inconsistent fact has been sought to be introduced by way of amendment and as such, the court below was justified in allowing the defendant's application for amendment and the order impugned does not call for interference.

I have considered the submissions made by both the parties. It appears from paragraph 1 & 3 of the plaint that the plaintiff, has claimed 2 satak of land in plot no. 714 of mouza Chaital, stating that they were granted ownership by the Government of West Bengal under Homestead Act, 1975 and further alleged that the defendants have illegally made an attempt to demolish their structure on the aforesaid land on 25.2.2018 and for which the plaintiff has prayed for injunction restraining defendants from dispossessing the plaintiff

from the suit property and also from changing the nature and character of the suit property till disposal of the suit.

On the contrary, the defendants in their written statement had taken the plea that the said plot no. 714 measuring 1 acre within which 25 satak of land was purchased by Prabir Das on 6.7.2000 by registered deed no. 2777 and he raised construction therein and let out room to the plaintiff on the basis of oral agreement. However, according to the defendant, they subsequently discovered that, plaintiff has managed to record 2 satak of land in their favour within that plot of land, which is erroneous recording and for which they have already initiated a misc. case being Misc. Case no. 37/17 which is pending before the Block Land and Land Reforms Office and not yet been disposed of.

By way of amendment, the defendant has now sought to introduce that they are in possession of the said 25 satak of land out of 1 acre in plot no. 714 for last 40 years which father of defendant no. 1 Gunodhar Mondal got by way of an oral ewaz from the original owner, defendant no. 6. Subsequently, by a deed dated 6.7.2000, the property was transferred in favour of the minor Pintu Mondal who is the defendant no. 1 herein by said Gunodhar through registered deed dated 6.7.2000 being deed no. 2777 and the original deed was lost during Ayla. However, during Ayla, the plaintiff has sought for help from the defendant for keeping his cattles in a plot of

land on the assurance that they will vacate the same within few days, they refused to vacate the same and defendants revoked the licence. Now it transpires that they have recorded 2 satak of land in their favour erroneously and for which the Misc. case has been initiated and in the proposed amendment, the defendant has also sought to incorporate that in the month of January, 2018, the plaintiff has demolished structure standing on the suit property and tried to make pucca construction.

A careful reading of the application for amendment of written statement, I am of the view that the petitioner/defendant seeks only to elaborate and clarify the earlier inadvertence made in his written statement. The High Court while exercising its jurisdiction under Article 227 of the constitution of India is confined only to see whether the court below has proceeded within the parameters of its jurisdiction or not. The trial court had in the considered exercise of its jurisdiction allowed the amendment of the written statement by a reasoned order. There is no reason for the High Court to interfere with the observation of Trial Court, where he observed that proposed amendment if allowed will not change the nature and character of the suit and when he did not find any impediment to allow the prayer for amendment of written statement for proper adjudication of the suit.

In such view of the matter, I find that the order impugned does not call for interference. C.O. 4117 of 2019 is therefore dismissed. This order is passed without prejudice to the Misc. Case which is pending before the Block Land and Land Reforms Office.

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.)