

09.10.2023
Sl. No.68(ML)
srm

C.O. No. 3763 of 2022

With

CAN 1 of 2023

Pradip Roy

Versus

Chandan Roy & Ors.

Mr. Sourav Sen,
Ms. Adrisnata Chakraborty

...for the Petitioner.

Mr. Gopal Chandra Ghosh,
Mr. Rajkrishna Mondal

...for the Opposite Parties.

By an order dated September 19, 2022, the learned Civil Judge (Senior Division), 3rd Court at Barasat, North 24-Parganas, allowed an application for amendment of the plaint, in Title Suit No.545 of 2022.

According to Mr. Sen, learned Advocate for the petitioner/defendant the amendment was sought to incorporate a property of the petitioner/defendant. The mother who had acquired the property by a deed of sale of 1956, had transferred the property by way of a gift in favour of the petitioner. The plaintiff sought to incorporate such private property of the petitioner, having full knowledge of such gift. Such amendment could not be allowed as the same was not a

part and parcel of the joint properties and were outside the purview of the suit.

On perusal of the application for amendment, it appears that during the commencement of the suit for partition, the plaintiffs filed the application alleging that they did not have any information with regard to the said property. Subsequently, they came to know that the property had been acquired by their mother and was a part of the joint property. Hence, the property was sought to be brought within the schedule of the plaint. This is a pre-trial amendment. The truth and veracity of the amendments should not be decided at the time of disposal of an application for amendment.

The contention of Mr. Sen that the property was the exclusive property of the petitioner, will be decided at the trial, on evidence. Such contention of Mr. Sen touches the merits of the amendment which is not to be looked into at the stage of disposal of the application for amendment.

The petitioner is at liberty to raise all points including his claim to the property which he acquired by virtue of a deed of gift at the trial and adduce evidence. The partition suit will be decided on its own merits.

It is for the plaintiffs to prove their case for partition and also prove that the property subsequently sought to be

incorporated was part of the joint property. If the plaintiffs fail to discharge their onus, the said property shall be ousted from the other properties of the partition suit.

The revisional application is disposed of.

In view of disposal of the revisional application, the connected application has become infructuous and the same is disposed of accordingly. The petitioner is at liberty to file the additional written statement within two weeks from reopening of the court after the puja vacation.

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.)