

Item No. 7
16.08.2023
Court. No. 19
GB

C.O. 3828 of 2022

Asish Pakhira
Vs.
Krishna Kali Pakhira & Ors.

*Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta*

...for the Petitioner.

*Mr. Chayan Gupta,
Mr. Rittick Chowdhury,
Mr. Shoham Sanyal*

...for the Opposite Party No.1.

This Court does not find any reason to interfere with the order impugned as the learned court rightly held that the entire schedule of amendment related to the deed of 1983 which was admittedly under challenge in separate suits. Although, the prayer in the schedule of amendment seeks to impugn the deeds of 2012, this Court is of the view that not a single sentence has been dedicated in the entire schedule of amendment with regard to the deeds of 2012 and the date when knowledge of the same was acquired by the petitioner. It is an oral submission that the petitioner came to know of the same from the application under Order 39 Rule 4 of the Code filed by the opposite party. Such averment has not been made in the application for amendment.

How the deeds affected the parties, why the same were required to be brought on record and challenged, how the bar of limitation would not be attracted considering the date of knowledge of the petitioner, are absent in the schedule of amendment. Hence, the revisional application deserves no consideration.

Moreover, the background of the case relating to the deed of 1983 was suppressed in the plaint, although the petitioner was party to some of the proceedings challenging such deed.

Admittedly, the petitioner has not prayed for any declaration in respect to the 1983 deed, but the averments in the schedule of amendment are very confusing and the petitioner has not pinpointedly been able to satisfy this Court as to why such facts were required to be incorporated in the plaint for proper adjudication of the dispute between the parties and in order to avoid multiplicity of proceedings. The deeds mentioned in the schedule, appear to be the one of 1983.

If the contention of the petitioner is that on the application being filed by the opposite party no.1 under Order 39, Rule 4 of the Code of Civil Procedure, the petitioner came to know of the impugned deeds of 2012, such averment ought to have been specifically made in the schedule. Averments as to how and why challenge to such deeds were relevant for the decision in the partition suit, should have been included in the schedule of amendment. The averments with regard to 1983 deed are matters of another suit which could be mentioned, but as a background to the deeds of 2012. The elaborate and repetitive statements in the schedule are confusing, ambiguous and do not indicate how the same were necessary for adjudication of the real controversy between the parties.

Thus, the revisional application is disposed of without any interference. The petitioner is at liberty to file a fresh application for amendment to bring on record the facts and all issues relating to the background of the case and the 2012 deeds, with special reference to how the said amendment would not be ex facie barred by limitation and with further information as to how such facts were relevant for determination of the real controversy between the parties.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)