

18.09.2023
Court No. 19
Item no.11
CP

C.O. No. 3980 of 2022

Sri Chandra Nath Sarkar & ors.
Vs.
Sri Sovanlal Bishu & ors.

Mr. Sabyasachi Mondal
Mr. A.S. Fazlul Karim
Ms. Payel Khanra

.....for the petitioners.

This revisional application arises out of two orders dated April 7, 2021 and February 10, 2022, passed by the learned Civil Judge (Junior Division), 2nd Court, Ranaghat, Nadia in Title Suit No. 92 of 2018.

The learned advocate for the petitioners submits that by the aforementioned orders, the plaint and the injunction application were allowed to be amended. According to the petitioners, the learned court below recorded consent, which was incorrect. It is further contended that the petitioners did not get a chance to contest the proceedings.

The petitioners are not aggrieved by the order passed expunging the name of the plaintiff no. 2 from the cause title, but are aggrieved with the orders allowing amendment.

The order dated April 7, 2021 relates to amendment of the plaint. From the order dated April 7, 2021, it appears that the petitioners did not raise

any objection to the prayer for amendment of the plaint and deletion of party. Upon such submission of both the sides and for the ends of justice, the amendment of the plaint was allowed.

The court found that the amendment was formal in nature. The L.R. Plot No. of corresponding R.S. Plot No. 642 had been omitted from the schedule due to oversight and the same was required to be inserted. That the plaintiff no. 1 did not have any interest in respect of the R.S. Plot No. 638 corresponding to L.R. Plot No. 782 and as such, the R.S. Plot No. 638 corresponding to L.R. Plot No. 782 in schedule of the plaint was sought to be deleted. The name of the plaintiff no. 2 was also sought to be expunged by such amendment.

By the amendment, the plaintiff in the suit sought to give up his claim in respect of R.S. Plot No. 638 corresponding to L.R. Plot No. 782 and wanted to restrict the suit in respect of only R.S. Plot No. 642 corresponding to L.R. Plot No. 786. As the plaintiff no. 2 had interest in R.S. Plot No. 638 corresponding to L.R. Plot No. 782, the name of the plaintiff no. 2 was sought to be expunged from the plaint as the petitioner by amendment, restricted his claim to LR Plot No.786, RS Plot No.642.

The plaintiff has a right to give up some of his claims. That was done by way of the amendment. It

also appears that the learned court below recorded that the petitioners did not raise any objection. The petitioner did not approach the said court, objecting to the recording of consent. Such point cannot be raised in this revision, after such a long time.

On the merits of the order allowing amendment of the plaint, this court finds that trial had not begun. The plaintiff was willingly giving up a part of his claim. Such amendment was rightly allowed as the same did not amount to withdrawal of any admission or setting up of contrary pleas. It did not change the nature and character of the suit.

The order was not challenged for two years. When on the same lines, the injunction application was sought to be amended and the order dated February 10, 2022 was passed, the petitioners approached this court.

The law is well settled. An interlocutory application can also be amended. The plaint was already amended by the learned court below with reasons. As a natural consequence thereof, it was necessary for the plaintiff to also amend the injunction application, or else, there would be contrary pleas in the plaint and in the injunction application.

According to learned advocate for the petitioners, the schedule of the plaint did not match

with the deed through which the plaintiff was claiming right, title and interest. This is an objection with regard to the merits of the amendment.

In the decision of ***Rajesh Kumar Aggarwal and others vs. K.K.Modi and others reported in AIR 2006 SC 1647***, it has been held that the court, while considering an application for amendment, should not decide the merits of the case. It is for the plaintiff to prove the case on the basis of the documents relied upon. Contentions of the plaintiff in the amendment application may not be sacrosanct but the amendment was rightly allowed as it was in the nature of foregoing some claims, correction of the schedule, deletion and incorporation of some facts which became necessary upon the plaintiff no. 2 being expunged from the array of plaintiffs in the suit.

The relevant portion in ***Rejesh Kumar (Supra)*** is quoted below:-

"While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment."

Under such circumstances, the orders impugned do not call for any interference.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)