

Ct.
No.
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2023

C.O. 4157 of 2017
Gopal Mondal
-Versus-
Tarapada Mondal & Anr.

Mr. Tanmay Mukherjee
Ms. Shila Sarkar
Mr. Souvik Das
Mr. Rudranil Das
Mr. Soumava Santra **...For the Petitioner**

Mr. Aniruddha Chatterjee
Mr. Rwitendra Banerjee
Mr. Shibasis Chatterjee **...For the Opposite Parties**

This application under Article 227 of the Constitution of India has been filed by the petitioner against Order No. 45 dated 3rd June, 2017 passed by the learned Civil Judge (Junior Division), Chanchal at Malda, in Miscellaneous (P) Case No. 5 of 2012.

The case of the petitioner as described in the application under Section 8 of the West Bengal Land Reforms Act, 1955 is for preemption against the opposite parties in respect of the schedule mentioned property. The aforesaid Misc. Case, being No. 5 of 2012 came up for hearing and after contested hearing the learned Trial Judge by an order dated 9th March, 2016 was pleased to allow the preemption case holding that the suit plot is un-partitioned and un-demarcated and the opposite parties are stranger purchasers and therefore the petitioner is entitled to preempt the suit property.

The learned Trial Judge has also come to a clear finding that the Deed No. 8127 of 2009 which was sought to be brought into evidence before the commencement of the trial of the preemption proceedings was disallowed, holding that the same is beyond the pleading in the application for

amendment of the written objection filed on behalf of the opposite parties.

The opposite parties being aggrieved by the judgment and order dated 9th March, 2016 passed in aforesaid preemption case No. 5 of 2012 preferred an appeal, being Misc. Appeal, being No. 12 of 2016 before the learned District Judge, Malda and in the said appeal an application under Order XXXXI, Rule 27 was also filed for adducing additional evidence for taking into consideration the schedule of the documents as described in the said application. The aforesaid appeal, being No. 12 of 2012 came up for hearing before the learned District Judge at Malda along with the application under Order XXXXI, Rule 27 of the Code and the learned Judge was pleased to dispose of the aforesaid appeal by remanding the matter to the learned Trial Court for fresh adjudication of the dispute between the parties as to whether the respondents should be allowed to preempt the disputed property purchased by the appellant.

After such remand the opposite parties filed an application for amendment under Order VI, Rule 17 of the Code contending that the Deed No. 8127 executed on 8th December, 2016 should be incorporated to substantiate that the suit property has been demarcated and the same is partitioned. The petitioner filed written objection to the application for amendment contending, inter alia, that the amendment application making the same prayer for incorporation of the fact of execution of a Deed of Gift in the year 2009, has already been rejected by the learned Trial Judge and therefore the same relief afresh is not maintainable and the opposite parties cannot be allowed to

fill up the lacuna in evidence by producing the said document afresh.

The aforesaid application for amendment came up for hearing before the learned Trial Judge and the Trial Judge after hearing the parties was pleased to allow the said application for amendment holding that the proposed amendment is necessary for the proper adjudication of the real controversy between the parties.

Being aggrieved by the said order the petitioner contended that the Court below acted illegally and with material irregularity in failing to consider the scope of the present case and thereby failed to consider the scope of the present application. The Court below committed error in allowing the application for amendment of the written statement under Order VI, Rule 17 for incorporating the issue of execution of a Deed of Gift in the year 2009, which was previously rejected by the learned Trial Judge at the time of hearing of the preemption case and therefore said amendment could not have been allowed as barred under the provisions of Section 11 of the Code. Learned Court below ought to have considered that the amendment application cannot be permitted to fill up the lacuna in the evidence which was earlier dis-allowed by the Trial Judge.

The petitioner in this context has relied upon the decision in the case of *Krishna Prasad @ Krishna Pada Mahanty Vs. Bhim Mondal*, reported in 2016 (1) CHN (CAL) 599 and in the case of *Brahma Dutta Chowdhury Vs. Ranjit Chowdhury & Ors.*, reported in 1995 (2) CLJ 129 in support of his contention that the amendment which amounts to de novo trial cannot be permitted as the scope of remand in the present case is very limited.

The petitioner also relied upon the decision of the Coordinate Bench of this High Court in the case of *Bimanta Biswas & Anr. Vs. Monoranjan Kha & Anr.*, reported in 2012 (4) ICC 686 in support of his contention that the scope of remand cannot be enlarged by the Trial Court but has to decide the matter within the parameters of the order of remand.

Mr. Aniruddha Chatterjee, learned Counsel appearing on behalf of the opposite parties, supporting the order impugned contended that the acquisition of title by the opposite parties herein, in the property, which is sought to be incorporated by way of amendment is very much necessary for proper adjudication of the dispute and said deed is a vital document and unless it is accepted by way of additional evidence it would not be possible for the Court to come to a reasonable conclusion. Moreover, proposed amendment if allowed will not extend the scope of the remand as the case which has been sought to be set up in the proposed amendment is an elaboration of fact already stated in the written objection.

Having considered the facts and circumstances of the case, it appears that the Court below on perusal of the amendment petition and written objection came to a finding that the proposed amendment is very much important and relevant for proper adjudication of the suit, in spite of the fact that there has been laches on the part of the opposite parties and it also shows lack of due diligence in drafting written objection without taking all relevant facts, but still the Court below came to a concrete finding that the proposed amendment is necessary for proper and just adjudication of the real controversy between the parties and the Court below accordingly allowed the said amendment.

The scope under Article 227 of the Constitution of India is confined only to see whether Court below has proceeded within the parameters of its jurisdiction or not. The Court below observed that the proposed amendment is very important and relevant for effective and conclusive adjudication of the dispute between the parties and that the proposed amendment if allowed will not change the nature and character of the case and that such belated prayer can be compensated by cost. When the Trial Court with the aforesaid observation and exercising his jurisdiction allowed the amendment, I find no reason to interfere under Article 227 of the Constitution of India.

In this context reliance can be placed upon paragraph 12 of the case of **Raj Kumar Bhatia Vs. Subhas Chandra Bhatia**, reported in (2018) 2 SCC 87 which runs as follows :

12. This being the position, the case which was sought to be set up in the proposed amendment was an elaboration of what was stated in the written statement. The High Court has in the exercise of its jurisdiction under Article 227 of the Constitution entered upon the merits of the case which was sought to be set up by the appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction under Article 227. In Sadhana Lodh v. National Insurance Co. Ltd. [Sadhana Lodh v. National Insurance Co. Ltd., (2003) 3 SCC 524 : 2003 SCC (Cri) 762] , this Court has held that the supervisory jurisdiction conferred on the High Court under Article 227 is confined only to see whether an inferior court or tribunal has proceeded within the parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order. The trial court had in the considered exercise of its jurisdiction allowed the amendment of the written statement under Order 6 Rule 17 CPC. There was no reason for the

High Court to interfere under Article 227. Allowing the amendment would not amount to the withdrawal of an admission contained in the written statement (as submitted by the respondent) since the amendment sought to elaborate upon an existing defence. It would also be necessary to note that it was on 21-9-2013 that an amendment of the plaint was allowed by the trial court, following which the appellant had filed a written statement to the amended plaint incorporating its defence. The amendment would cause no prejudice to the plaintiff.

The aforesaid judgments cited by the petitioner is not applicable in the present case as proposed amendment if allowed will not amount to de novo trial nor proposed amendment will change the nature and character of the case as happened in the aforesaid cited judgments.

In such view of the matter, I find nothing to interfere with the order impugned. C.O. 4157 of 2017 is therefore dismissed.

The opposite parties herein are directed to file the amended written objection within a period of two weeks after reopening of the Court after Puja vacation.

The Court below will make all endeavour to dispose of preemption application afresh in terms of the order of the Appellate Court passed in Misc. Appeal 12 of 2016 preferably within a period of 12 (twelve) weeks thereafter.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)