

S/L 33
19.02.2024
Court. No. 3
Suvayan

CO 588 of 2020

**Sri Bhagbat Chandra Dey & Ors.
Vs.
Sri Muktipada Malas & Ors.**

*Mr. Sudeep Sanyal
Mr. Snehasis Jana
Mrs. Anulekha Bera Maiti
Mrs. Tutun Das*

...for the petitioners.

Mr. Krishna Das Poddar

..for the opposite parties.

1. The petitioners and the opposite parties are represented by their respective learned Advocates.
2. Heard learned Advocate for the petitioners and learned Advocate for the opposite parties at length. The present case is now taken up for passing appropriate order.
3. In this revisional application as filed under Article 227 of the Constitution of India the Order No. 60 dated 06.01.2020 as passed by the learned Civil Judge (Sr. Division), Ghatal, Paschim Medinipur in Title suit No. 71 of 2014 has been impugned. By the impugned order learned Trial Court has been pleased to reject the plaintiffs' application dated 04.11.2019 for amendment of the plaint as filed under Order VI Rule 17 of the Code of Civil Procedure. The plaintiffs felt aggrieved and thus preferred the instant revisional application.
4. In support of the instant revisional application, Mr. Sanyal learned Advocate for the plaintiffs/petitioners at the very outset draws attention of this Court to the

Annexure – B of the instant revisional application being the photocopy of the petition for amendment. Attention of this Court is also drawn to the impugned order as passed by the learned Trial Court. It is contended that on conjoint perusal of the said petition for amendment and the impugned order, it would reveal that learned Trial Court is not justified in holding that the petition for amendment as filed before the learned Trial Court has been filed at a very belated stage that is after the commencement of trial and that in the event such amendment petition has been allowed that would tantamount to condonation of delay in seeking appropriate relief in the said suit.

5. Mr. Sanyal, learned Advocate for the plaintiffs/petitioners further submits before this Court that from the schedule of amendment as specifically mentioned in the petition for amendment it would reveal that the facts which are sought to be incorporated are all subsequent events and occurred on account of violation of the injunction order at the instance of the defendants. It is, thus, contended on behalf of the plaintiffs/petitioners that for effective adjudication of the said suit for partition, the proposed amendment of the plaint including its prayers are very much necessary which the learned Trial Court has failed to visualise. Learned Advocate for the plaintiffs/petitioners, thus, submits that it is a fit case for allowing the instant revisional application by setting aside the impugned order.

6. *Per contra*, Mr. Poddar, learned Advocate for the opposite parties/defendants submits before this Court that learned Trial Court is very much justified in passing the impugned order inasmuch as the plaintiffs have made inordinate delay in filing the petition for amendment which is evident from the petition for amendment as well as from the impugned order. It is further submitted that since issues have already been framed which according to the learned Advocate for the defendants/opposite parties is the first day of commencement of the trial, learned Trial Court is very much justified in holding that the petition for amendment has been filed at a belated stage and the plaintiffs/petitioners before the learned Trial Court has miserably failed to show any cogent reason and explanation as to what prevented them to file similar such application in an earlier stage specially when the incident as alleged in the petition for amendment occurred in the year 2014 whereas the petition for amendment was filed on 04.11.2019.

7. It is further submitted on behalf of the defendants/opposite parties that in the event the amendment as sought for is allowed to stand that would tantamount to condonation of delay for inserting a prayer which is completely barred by law of limitation.

8. On perusal of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties it appears that the learned Trial Court while passing the impugned order of rejection has practically assigned two reasons, namely, (i) inordinate

unexplained delay in filing the amendment application especially when trial has commenced; (ii) in the event the petition for amendment is allowed that would negate the provisions of the Limitation Act.

9. From the very first page of the impugned order, it reveals to this Court that it is the finding of the learned Trial Court that the said suit at that material time was at the nascent stage of trial and the evidence of the witnesses for the plaintiffs have not yet commenced. Such being the position, it cannot be said that the trial of the said suit has been actually commenced that is recording of evidence of the parties have started.

10. Admittedly, it is settled principle of law that framing of the issue is the first day of trial but in considered view of this Court the proviso of Order VI Rule 17 of the Code of Civil Procedure is to be construed keeping in mind the true intention of the legislature to prevent unscrupulous litigants to come with an amendment petition after commencement of the trial in respect of the events which occurred either before the trial or during pendency of the trial and those facts are very much within the knowledge of the said litigant.

11. In view of the discussion made hereinabove, this Court cannot concede with the view taken by the learned Trial Court that the petition for amendment has been filed at a very belated stage that is trial of the suit has commenced.

12. On perusal of the petition for amendment *vis a vis* the impugned order it appears to this Court that by way of

the proposed amendment the plaintiffs before the learned Trial Court made an attempt to incorporate certain facts which occurred during the pendency of the suit and to that extent the plaintiffs have also prayed for amendment of the prayer portion of the plaint. Admittedly, the suit before the learned Trial Court was filed in the year 2014 and as per the plaintiffs the incident occurred on 06.08.2014 may be either before the institution of the suit or during the pendency of the suit.

13. In considered view of this Court the amendment as sought for by the plaintiffs before the learned Trial Court is very much necessary for effective adjudication of the said suit, however, so far as the proposed amendment in respect of the prayer portion of the plaint is concerned. This Court considers that the amendment of the payer may be allowed, however, the principle of '*doctrine of relation back*' will not apply in respect of the amendment of such prayer.

14. With the aforementioned observations, the instant revisional application being CO 588 of 2020 is allowed. Consequently, the impugned Order No. 60 dated 06.01.2020 as passed by the learned Civil Judge (Sr. Division), Ghatal, Paschim Medinipur in Title suit No. 71 of 2014 of 2014 is hereby set aside.

15. Consequently, the petition for amendment of plaint as filed by the plaintiffs before the learned Trial Court under Order VI Rule 17 of the Code of Civil Procedure stands hereby allowed on contest. The defendants/opposite parties are hereby permitted to file

their additional written statement, if there be any, within a period of 30 days from the day of passing of this order and/or from the day of filing of the amended plaint before the learned Trial Court after serving a copy of the same upon the defendants whichever is later.

16. Learned Trial Court is at liberty to frame additional issues, if there be any. It, however, is made clear that this Court has not gone into the question of limitation with regard to the amended prayer portion of the plaint and the same is kept open for the decision of the learned Trial Court at the time of passing judgment after recording evidence of the parties, both oral and documentary.

17. Parties are directed to act upon the server copy of this order duly downloaded from the official website of this Court.

18. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)