

29.01.2024
Ct. No. 19
Sl. No.06
Cp

C.O. No. 529 of 2023
with
CAN 1 of 2023
Sri Asesh Sinha & Ors.
Vs.
Smt. Gayatri Prasad & Ors.

Mr. Debanik Banerjee
Mr. Indradip Das
Mr. Preetam Majumdar

.....for the petitioners.

Mr. Sudip Ghosh Choudhury
Ms. Shreyita Mitra

.....for the opposite parties.

1. The affidavit of service is taken on record. Although, the matter was mentioned for extension of interim order and an application has been filed with such prayer, the court proceeds to dispose of the revisional application.
2. The petitioners have challenged an order by which an amendment to the plaint was allowed by the learned Civil Judge (Senior Division), 2nd Court, Alipore in Title Suit No. 75 of 2016.
3. According to the petitioners, who are the contesting defendant nos. 1 to 3, the amendment was allowed without recording any reasons and without allowing the said defendants to file their objections to the application for amendment. The learned court was of the view that

the amendments sought to be incorporated were formal in nature and would not change the nature and character of the suit.

4. Mr. Banerjee, learned advocate appearing for the petitioners submits that only on one occasion the defendants failed to take steps and the application for amendment was allowed. The learned court ought to have given them an opportunity to file an objection to the said amendment, as substantial changes were incorporated in the plaint on the facts pleaded. It is further submitted that the Schedule of the suit property had been extended to Schedule B, C, D and E. The contentions with regard to sale of part of the property were known to the plaintiff. The amendments sought to be incorporated were belated.
5. Considering the nature of the amendment and the extensive changes which were sought to be incorporated in the plaint, an opportunity to oppose the same should have been allowed.
6. Mr. Ghosh Choudhury, learned advocate appearing for the plaintiff/opposite party, submits that the amendments were formal in nature. In a suit for partition, certain facts came to light later on. They were sought to be incorporated, for complete adjudication of the dispute between the parties.

7. Heard the parties. The order dated August 26, 2022 would indicate that the defendants were present when the learned court had fixed the application for amendment, for hearing on November 15, 2022. The earlier amendment application was not pressed. Knowing fully well about the said order the defendant nos. 1 to 3, chose not to appear in the suit on November 15, 2022. They failed to take steps.
8. This court proceeds to decide the nature of objection that the defendant nos. 1 to 3 may have had with regard to the amendments sought to be incorporated. The suit is for partition. The plaintiff does not dispute shares of the defendants. The plaintiff wanted to incorporate certain facts which were missed out due to hurried drafting of the plaint. Further, certain facts with regard to the properties were incorporated including the fact that parts of the premises constructed, namely, 'Owners Allocation' had been sold. The quantum of car parking space in various paragraphs of the plaint were also sought to be corrected.
9. Under such circumstances, the defendants cannot have any serious objection to the application for amendment. Amendments are to be allowed liberally, unless the same changes the nature and character of the suit or there is withdrawal of any admission made and such withdrawal causes irreparable loss and injury to the

defendants or the amendments sought to be incorporated are barred by the laws of limitation.

10. The amendment application was filed after the issues were framed. Thus, delay caused should be compensated upon payment of cost to the defendant nos. 1 to 3. The nature of the amendment does not change the cause of action. Certain facts which are relevant for the complete adjudication of the dispute, for example, the quantum of car parking space, the number of flats sold and the incorporation of separate schedules, were incorporated. No right, which had accrued in favour of the defendant nos. 1 to 3 on the basis of the plaint, were taken away by way of such amendment. The defendant nos. 1 to 3 have not been able to demonstrate before the court, the prejudice that would be caused to them if such amendment is allowed. The truth and veracity of these facts which have been incorporated by way of the amendment, can be dealt with by the defendant nos. 1 to 3 in their additional written statement and such issues are to be decided on evidence at the trial. Merits of the application are not to be taken into consideration at this stage.
11. Under such circumstances, the amendment application was rightly allowed. However, the learned court ought to have imposed cost on the plaintiff. Thus, cost of Rs.10,000/- shall be paid to the defendant nos. 1 to

3/petitioners, by the plaintiff, either in cash or by cheque within a period of two weeks. A copy of the amended plaint be served upon the said defendants/petitioners.

12. The petitioners shall file their additional written statement within four weeks from receipt of the amended plaint or from date, whichever is later.
13. The learned court below shall frame further issues if necessary.
14. The parties are at liberty to suggest such issues and the suit shall proceed in accordance with law. It is expected that the suit of 2016 shall be disposed of expeditiously.
15. The revisional application is accordingly disposed of. With such disposal, connected application being CAN 1 of 2023 is also disposed of.
16. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)