

19.02.2024
Sl. No.54(DL)
srm

C.O. No. 554 of 2023
Soumik Roychowdhury & Anr.
Versus
Smt. Renu Grover & Ors.

Mr. S.N. Mitra, Sr. Advocate
Mr. Debjit Mukherjee,
Mr. Anuj Singh,
Mr. Sankarson Sarkar,
Mr. Vidhya Bhusan Upadhyay
...for the Petitioners.

Mr. Sakya Sen,
Mr. Sabyasachi Sen
...for the Opposite Party Nos.1 & 2.

1. The revisional application arises out of an order dated August 12, 2022 passed by the learned Civil Judge (Junior Division), 3rd Additional Court, Alipore, South-24 Parganas, in Title Suit No.170 of 2019.
2. Opposite Party Nos.1 and 2 filed a suit for declaration and injunction against the opposite party Nos.3 to 5. The petitioners are the defendant Nos.4 and 5 in the suit, who subsequently got added after having purchased the suit property.
3. By the order impugned, the learned court below allowed an application for amendment of the plaint on the ground that the subsequent events sought to be incorporated were

relevant and the amendment was formal in nature. Such events were required to be included in the plaint for proper adjudication of the dispute between the parties.

4. Mr. Mitra, learned Senior Advocate appearing on behalf of the petitioners/ defendant Nos.4 and 5/subsequent purchasers of the suit property submits that the tenants in their suit for declaration and permanent injunction did not have any right to challenge the conveyance deeds. By virtue of the said deeds, the petitioners had acquired right, title and interest in the suit property and had become owners thereof. According to Mr. Mitra, the suit was one for declaration of tenancy by the persons who claimed to be the tenants under the vendors of the petitioners. The petitioners had stepped into the shoes of the erstwhile vendors and the suit must proceed against the petitioners. The interest of the owners devolved upon the petitioners. Such a suit cannot be transformed into a suit for cancellation of the conveyance deeds of the present petitioners. Even if the plaintiffs claim to be the tenants, they do not have any right to challenge the title of the petitioners. The amendment which has been allowed, has transformed the nature of the suit. By such amendment, the learned court allowed the plaintiffs to not only enlarge the

scope of the suit, but also to challenge the title of present owners. A prayer for declaration that the deeds by which the petitioners had acquired right, title and interest of the property were fraudulent and should be cancelled, is beyond the nature and scope of the suit.

5. Mr. Mitra further submits that the nature of the protection that the court had given to the plaintiffs did not prevent sale of the property and, in any event, the alleged tenants cannot question the title of the landlord.
6. Mr. Sen, learned Advocate appearing on behalf of the plaintiffs/opposite party Nos.1 and 2 submits that the transfer was made not only during the pendency of the suit, but in the teeth of the injunction. Moreover, subsequent events which took place ought to be allowed to be incorporated. The incorporation of subsequent facts will not change the nature and character of the suit.
7. Having heard learned counsel for the respective parties, this Court finds from a reading of the amendment application and the schedule of amendment, that subsequent events have been sought to be incorporated. The factum of transfer of the property during the pendency of the suit in favour of the petitioners, have been narrated

in some of the paragraphs. Incorporation of such facts, does not change the nature and character of the suit.

8. Although Mr. Mitra submits that the allegation of fraud etc. has been pleaded in the schedule of amendment, this Court finds that the plaintiffs are entitled to bring on record their contention that the transfer was a fraudulent one.
9. However, this Court is of the view that the prayer 'C-1' cannot be allowed to be incorporated in the present suit. The suit is for declaration of tenancy and permanent injunction. In the present suit and specially the way the suit has been framed, a declaration that the deeds of conveyance by which the petitioners have become owners of the suit property cannot be prayed for. Such prayer is beyond the scope of the suit.
10. This Court refrains from commenting on the right of the plaintiffs to proceed against the petitioners by filing a separate suit, thereby challenging the deeds.
11. The amended plaint, incorporating the schedule of amendment, except prayer 'C-1', will be filed within four weeks from date. The additional written statement to the amended plaint will be filed within four weeks from date of receipt of the amended plaint. The suit shall proceed in accordance with law.

12. The revisional application is accordingly disposed of.

13. There shall be no order as to costs.

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

(Shampa Sarkar, J.)