

Ct.
No.
652

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23.04
2024

C.O. 419 of 2021

Jahangir Sekh & Ors.

-Versus-

Astab Ali Sekh (@Astab Sekh & Ors.

Mr. Tanmoy Mukherjee

Mr. Sagnik Chatterjee

...For the Petitioners

Mr. Chitta Ranjan Chakraborty

Mr. Sumit Banerjee

Ms. Puspa Rani Jaiswal

...For the Opposite Parties

This application under Article 227 of the Constitution of India is directed against order No. 87 dated January 08, 2021 passed by the learned Civil Judge (Senior Division), 2nd Court at Krishnagar, in Title Suit No. 25 of 2014.

The opposite party Nos. 1 and 2 herein filed aforesaid Title Suit No. 25 of 2014 against the petitioners herein, who filed joint written statement controverting the material allegations made in the plaint. Initially after conclusion of the argument, when the suit was fixed vide order No. 47 dated 26th April, 2016, the plaintiff added the proforma opposite party No. 5 as a party in the suit. Thereafter, the plaintiff prayed for amendment of the plaint which was allowed and the plaintiff was permitted to amend the plaint and the plaintiff was also allowed to adduce further evidence in the said suit.

The petitioner herein filed additional written statement along with an application for acceptance of the additional written statement on 24th July, 2019. The opposite

party Nos. 1 and 2 also filed written objection against the prayer for acceptance of aforesaid additional written statement. But the Court below by the order impugned dated 8th January, 2021 was pleased to reject the prayer for acceptance of such additional written statement sought to be filed by the defendants/petitioners.

Being aggrieved by that order, the petitioners/defendants submits that in the original written statement the petitioner herein have denied *Panchi Bewa's* 4.86% share in the suit property now by way of additional written statement defendants wants to plead that *Panchi Bewa* sold her share of 27 decimals in the suit property to *Sakai Sk*, predecessor in interest of the defendant Nos. 1 to 3. Furthermore in the original written statement it has been erroneously stated that defendant Nos. 4, 5 6 and 8 purchased 28 decimals of the suit property from Susthir Biswas, now in the additional written statement they sought to incorporate that Susthir Biswas transferred 28 decimals of the suit property to defendant Nos. 4, 5, 6 and 8 by executing *Hebanama*. Beside this in the written statement the Zamindar's name has been erroneously mentioned as Debendranath Singha Roy which has been sought to be corrected by filing additional written statement.

Learned Counsel appearing on behalf of the

opposite parties raised vehement objection contending that the evidence has already been adduced by both the parties and if the proposed written statement is allowed to be accepted, it will completely change the nature and character of the suit and it would amount to go for de novo trial, which will only cause further delay in disposal of the suit. Learned Court below rightly held that the facts sought to be incorporated by way of additional written statement is a retraction from the defendants' previous stand and that too after disclosure of evidence and accordingly the order impugned does not call for interference by this Court invoking jurisdiction under Article 227 of the Constitution of India.

In this context learned Counsel for the opposite parties relied on the decisions passed in the case of *State of Madhya Pradesh Vs. Union of India & Anr.*, reported in (2011) 12 SCC 268 and in the case of *M. Revanna Vs. Anjanamma (Dead) by legal representatives & Ors.*, reported in (2019) 4 SCC 332.

I have considered the submissions made by the learned Counsel appearing on behalf of the parties. It is true that the petitioners as defendants have sought to file additional written statement at a very belated stage when the suit is almost on the verge of completion. However, on perusal of the additional written statement, I find that the

present additional written statement sought to be filed is merely an attempt to elaborate the facts which have already been stated in the original written statement and as such if it is allowed to be accepted, the other side will not suffer such prejudice which cannot be compensated by cost. Delay in filing additional written statement can very well be compensated with costs but denying the benefit of filing of the written statement can be unreasonable for the interest of proper adjudication of the suit. Without deleting, what has been stated in the written statement, when the defendant has sought to file additional written statement which merely clarifies an existing pleading and does not in substance add to or alter it, I find no reason, why the Court below rejected such prayer. Moreover for conclusive and effective adjudication of the suit, the facts sought to be incorporated by filing written statement is required to be brought before the Court. I am also of the view, if the parties are given opportunity to recall their witnesses, then the plaintiff/opposite party will also have no cause to prejudice.

In such view of the matter, C.O. 419 of 2021 is allowed. The order impugned is set aside. The additional written statement filed by the defendants shall be accepted subject to payment of cost of Rs. 5,000/-, which would be paid by the defendants/petitioners to the plaintiffs within a

period of three weeks from the date of communication of the order. On such payment the additional written statement filed by the defendants shall be accepted by the Court below and the Court below will give opportunity to both the parties to recall their witnesses if required and the Court below will also make every endeavour for expeditious disposal of the suit, preferably within a period of two months from the date of communication of this order. In the absence of payment of cost, the order impugned will revive.

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.)