

C.O. 1023 of 2019

**Sri Hiranmoy Banerjee
Versus
Sri Pradip Lahiri and others**

Mr. Kajal Ray
Mr. Suman Nandi.
...for the petitioner.

Mr. Debayan Mukherjee.
...for the opposite party no.5.

Petitioner and opposite party no.5 are represented. Other opposite parties are not represented.

This is an application under Article 227 of the Constitution of India against Order no.64 dated 04.02.2019 passed by the learned Civil Judge (Junior Division), 2nd Court, Serampore, Hooghly in Title Suit No.188 of 2013. By the impugned order, learned court below was pleased to reject the plaintiff's application under Order VI Rule 17 of the Code of Civil Procedure seeking amendment of the plaint.

The petitioner's case in brief is that the suit property relates to a pathway, which has been described as private common passage of the plaintiff

and proforma defendants. In the aforesaid suit, the plaintiff has sought for a declaration that the schedule mentioned passage is the private passage of plaintiff and proforma defendant nos.6 to 11 and they have also prayed for a declaration that the defendant nos. 1 to 4 have no right, title or interest over the said common passage and also for a permanent injunction so that the defendants will not create any obstruction in their free egress and ingress through the said passage and also prayed for restraining the defendants from removing the broken iron gate at the entry of said passage and they have also sought for a mandatory injunction upon the opposite party no.5 for removing electric poll installed by them on that passage.

Now, by way of amendment, plaintiff wants to incorporate that during pendency of the suit, on 29.10.2016 the defendants have demolished the eastern side boundary wall and have installed one 6 ft x 4ft grill gate and they have also alleged that the defendant nos. 3 and 4 in collusion with defendant nos.1 and 5 have illegally consuming electricity from the electric poll erected over that passage. Moreover, in the prayer portion they have also prayed for removal of said 6 ft. x 4ft. grill gate which has been installed by the defendants allegedly during pendency

of suit and also for a direction upon the defendant no.5 for removal of the electric wire hanging over the suit passage, for consuming electricity in an illegal manner.

Learned court below after considering the submission of the parties rejected the plaintiff's prayer for amendment mainly on the ground that the subject matter of the amendment is not necessary for determination of the real controversy and furthermore the application for amendment has been filed after the commencement of trial in violation of the proviso laid down in Order VI Rule 17 of the Code of Civil Procedure without assigning any reason as to what prevented them from making such application for amendment before commencement of trial.

Learned advocate appearing on behalf of the defendant no.5 submits that on perusal of the plaint it appears that the plaintiff has already incorporated all the incidents in the plaint which they have now want to incorporate by way of amendment. Accordingly, the present amendment is not at all required for the purpose of adjudication of the suit. Furthermore, since the defendant no.5 has installed the electric poll long back, if such prayer for amendment is allowed it will amount to changing the

nature and character of the suit and for which it cannot be allowed.

I have considered the submissions made by both the parties.

On perusal of the schedule of amendment, it appears that the plaintiff by way of amendment wants to incorporate mainly the subsequent event and in respect of which he has also sought for passing mandatory and permanent injunction. Accordingly court below was not justified in observing that proposed amendment is not required for determination of real controversy between the parties. The suit though posted for trial but it appears that cross-examination of plaintiffs witness is continuing and not yet completed.

Now, whether the plaintiff will be succeeded in getting such relief or not will be adjudicated after the trial. Since the incident allegedly occurred during pendency of the suit, so the proposed amendment having a reference as subsequent event, if allowed for the ends of justice will help the court to adjudicate the real controversy between the parties over the suit passage. Furthermore proposed amendment if allowed would not alter cause of action nor would it cause inconsistency in case of plaintiff or prejudice to the other side/defendant. The issue in connection

with amendment petition is stated to be subsequent event and in the trial defendant will get the opportunity to cross-examine on the point of proposed amendment. Power to grant amendment to pleadings is intended to serve needs of justice and must not be governed by any narrow technical limitations. It is generally followed that all amendments ought to be allowed, which satisfy two conditions(i) of not working injustice to the other side and (ii) of being necessary for the purpose of determining the real question in controversy between the parties.

In such view of the matter, C.O. 1023 of 2019 is allowed and the order impugned is set aside.

Let the plaint be amended as per schedule of amendment petition.

The plaintiff is directed to file amended plaint within a period of 15 days from the date of communication of the order. All the defendants will be at liberty to file additional written statement, if any, within a period of three weeks thereafter. The court below will then consider whether any additional issue is required to be framed and thereafter he will proceed with the trial in accordance with law and all endeavour would be made for expeditious disposal of

the suit, since the suit is pending for a considerable period of time.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)