

11.03.2024
Sl. No.14(DL)
srm

C.O. No. 1231 of 2023
Nikhil Kumamr Kundu & Ors.
Versus
Nabin Kumar Kundu & Anr.

Mr. Srikrishna Samanta

...for the Petitioners.

Mr. Gopal Chandra Ghosh,
Mr. Sayan Sengupta,
Ms. Sunandana Saha

...for the Opposite Parties.

1. The revisional application arises out of an order dated February 14, 2023 passed by the learned Civil Judge (Junior Division), 1st Court at Arambagh, Hooghly, in Title Suit No.04 of 2020.
2. This Court does not find any necessity to interfere with the order impugned, as it appears that the amendment in paragraph 3 of the schedule was introduction of a statement that in terms of the direction of the High Court in C.O. No.1881 of 2021, the plaintiffs were entitled to 7/8th share and a preliminary decree to that effect declaring 7/8th share should be passed. While incorporating such prayer for passing a preliminary decree, the other prayers were deleted. Such amendment is contrary to the plaint case, contrary to the order of the High Court and makes the plaint itself defective.

3. The court had rightly observed that if the prayer for amendment by introduction of a relief for partition along with the other reliefs were available and the valuation exceeded the pecuniary jurisdiction of the court upon allowing such amendment, the court could return the plaint to the plaintiffs directing the plaintiffs to file it before the appropriate competent civil court. However, the nature of amendment is misconceived and such amendment will demolish the plaint case even further.
4. Under such circumstances, the revisional application is disposed of granting liberty to the petitioner to file an appropriate application by incorporating an additional prayer for partition along with proper pleadings and take further steps in accordance with law.
5. The learned court shall proceed in accordance with law.
6. The revisional application is disposed of without interfering with the order impugned.
7. There shall be no order as to costs.
8. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)