

February 22, 2024
Sl. No.5
Court No.19
s.biswas

CO 1576 of 2022

Dr. Sirajul Ahmed @ Sher Ali Khan and others

vs.

Jan Md. Khan @ Zan Md. Ali

Mr. Partha Pratim Roy
Mr. Malay Bhattacharya

... for the petitioners

Mr. Arup Krishna Das
Mr. Kazi Sajjad Alam
Mr. Joy chakraborty
Ms. Afsana Khatun
Mr. Mainul Thander

... for the opposite party

The revisional application arises out of an order dated April 29, 2022 passed by the learned Civil Judge (Senior Division), Bishnupur, Bankura, in connection with Title Suit No.18 of 2019.

By the order impugned, the learned court rejected an application for amendment of the plaint on the ground that delivery of possession of a property, without any written instrument, would not confer any title under Mohammedan Law. Thus, oral gift was not permissible in law. The amendment for correction of the date of the oral gift was also not permissible in law.

On such finding and upon interpretation of Article 300A of the Constitution of India, the amendment was rejected.

Mr. Roy, learned advocate for the petitioners, submits that this is a pre-trial amendment. The learned court could not have gone into the validity of the gift on the basis of which the petitioners claim to

be co-sharers of the property involved in the suit. The amendment was necessary to correct the typographical error in paragraph 8 of the plaint. The dates of the oral gift mentioned in paragraph 8 as 1st September, 1973 should be corrected as 21st September, 1973.

Learned advocate for the opposite party submits that the date was always within the knowledge of the plaintiffs and the amendment should not be allowed at a belated stage.

Having considered the rival contentions of the parties, this court finds that this was a pre-trial amendment. The suit was at the stage of hearing of the injunction application. Thus, the contention that the amendment is belated, is not accepted.

This court also finds that the learned trial judge had gone into the merits of the amendment sought for and arrived at a finding that oral gift was not permissible in Mohammedan Law. At the stage of amendment, the correctness or veracity of the statements sought to be incorporated, should not be looked into.

The correction of mistake in the date, which may have been detected during the proceedings by the plaintiffs, can always be allowed. The amendment is allowed. The order impugned is set aside.

The amended plaint upon incorporating the dates in paragraph 8 of the plaint, as per schedule, shall be filed within four weeks. Additional written statement to the said amended plaint shall be filed within four weeks. The learned court shall proceed with the hearing of the suit, in accordance with law. The suit shall be disposed of within a year from completion of the pleadings.

The revisional application is accordingly disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)