

6.3.2024
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Ct. no. 652
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CO 2352 of 2019

Dr. Sayani Lahiri & Anr.
Vs.
Smt. Nihar Bala Lahiri & Ors.

Mr. Chirantan Sarkar ...for the Petitioners

Mr. Debjit Mukherjee ...for the O.P. nos. 1 & 2
(in virtual mode)

The predecessor-in-interest of the petitioners filed Title Suit being no. 50 of 2008 *inter alia* for declaration, partition and injunction against the opposite parties herein. After the death of original plaintiff, Dr. Swapan Kumar Lahiri, the present petitioners have been substituted in his place.

During pendency of the suit, the petitioners herein filed one application under Order VI rule 17 of the Code of Civil Procedure seeking amendment of the plaint contending that during pendency of the suit, they came to know that their predecessor-in-interest namely, Bijoy Bhusan Lahiri was the original owner of land and structure lying at 60, Dharmatala Lane, Shibpur, Howrah and the said property is required to be incorporated in the suit for proper adjudication and fair disposal of the partition suit.

Mr. Sarkar, learned counsel for the petitioners further contended that the proposed amendment if

allowed, will not change the nature and character of the suit since even after amendment, the suit will remain a suit for partition.

Learned court below by the impugned order dated 15th February, 2019, rejected the plaintiff's prayer for amendment.

Being aggrieved by that order, learned counsel for the petitioners submits that the learned court below failed to consider, since this is a suit for partition, proposed amendment for incorporation of a property in the schedule in respect of which they were not aware earlier, should have been allowed. He further contended that the proposed amendment is formal in nature and is required to be allowed for proper adjudication of the suit. In fact, the learned court below acted illegally and with material irregularity in not considering the contentions of the plaintiffs/petitioners. Accordingly, he has prayed for setting aside the order impugned.

Mr. Mukherjee, learned counsel for the opposite party nos. 1 & 2 raised strong objection contending that the property which the plaintiffs want to incorporate by way of amendment is not at all a joint property of the co-sharers and in fact, by way of a deed of family settlement executed on 15th February, 1990, the original owner, Bijoy Bhusan Lahiri settled the said property appertaining to 60, Dharmatala Lane, Shibpur, Howrah in favour of Mrs. Nihar Bala Lahiri his wife being

defendant no. 1 herein. Accordingly, the said property is the exclusive property of Nihar Bala Lahiri and the present plaintiffs do not have right title and interest over the said property. In such view of the matter, the said property cannot be incorporated in the schedule to the plaint and accordingly, he has prayed for dismissal of the application.

I have gone through the order impugned and considered the submissions made by both the parties. In the order impugned, learned court below has specifically held that by way of deed of settlement, the settler, Bijoy Bhusan Lahiri in clear and unequivocal terms, had disentitled his son, Dr. Swapan Kumar Lahiri from the suit property and accordingly, the present plaintiffs being the heirs of Swapan, do not have any right title and interest over the said property.

In so far as the principles governing the prayer for amendment of pleading is well settled. Generally all amendments ought to be allowed which satisfy the two conditions

- (i)** Of being necessary for the purpose of determining the real questions in controversy between the parties
- (ii)** Of not working injustice to the other side.

In the present context, since the deed of settlement executed in favour of defendant no. 1 by the original

owner, Bijoy Bhusan Lahiri has not been declared as null and void by any competent court of law so as on this date, Nihar Bala Lahiri/defendant no. 1 is the exclusive owner in respect of the said property and since in respect of that property she is not a co-sharer with the other parties in the suit, such property is not required to be brought in the common hotchpot in the present suit. Accordingly, the court below rightly rejected the said prayer for amendment since such amendment is not at all required for determining the real question in controversy between the parties.

In such view of the matter, I do not find any reason to interfere with the impugned order invoking jurisdiction under Article 227 of the Constitution of India.

Accordingly, C.O. 2352 of 2019 is dismissed.

The present suit is pending since 2008. In such view of the matter, the court below is directed to make every endeavour for expeditious disposal of the suit without granting any unnecessary adjournment to either of the parties and to make his best effort to conclude the entire proceedings of the suit preferably within a period of six months from the date of communication of the order.

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

(Ajoy Kumar Mukherjee, J.)