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10.09.2024

*In The High Court At Calcutta
Civil Revisional Jurisdiction*

C.O. No. 2063 of 2023

Soumen Biswas & Ors.

Vs.

Israr AHmed

Mr. Sanjay Mukherjee ... For the petitioners.

Mr. Aniruddha Chatterjee, (VC),
MR. Jaydeep Biswas ... For the opposite party.

The defendants in a suit for declaration of title and other consequential reliefs are the petitioners of the instant application under Article 227 of the Constitution of India.

The said suit being Title Suit No. 103 of 2021 is pending before the Court of the learned Civil Judge, (Senior Division) at Sealdah, District – 24 – Parganas (South).

The learned Trial Judge by the order impugned dated May 15, 2023 has allowed an application filed by the plaintiff for amendment of the plaint.

Mr. Mukherjee, learned advocate for the petitioners submits that the plaintiff by the proposed amendment has changed the entire complexion of the suit by converting it from a suit for declaration of title to a suit for specific performance of an agreement for sale.

Heard Mr. Mukherjee, perused the materials-on-record.

The plaintiff by the proposed amendment, has changed the nature of relief in the suit, not the structure of it. If the amendment sought for is denied, the plaintiff would be constrained to file a fresh suit for the said relief, therefore to avoid the multiplicity of proceedings, the amendment sought for deserves to be allowed.

The order impugned, for the said reason, does not call for any interference.

An amendment of the pleadings, when allowed, it generally relates back to the date of filing of the suit, however doctrine of such relation-back is not universally applicable, in the context of the facts and circumstances of the present case, the amendment sought for would not relate back to the date of filing of the suit but it shall be deemed to have been brought in the pleadings from the date of filing of the application for amendment.

It is made clear that the impact of the said amendment of the plaint on the cause of action vis-à-vis the issue regarding the maintainability of the suit on the point of limitation is kept open.

However, in view of such amendment of the plaint, the petitioners are at liberty to pray for the variation and/or vacation of the subsisting order of injunction.

Time to file additional written statement is extended for a further period of two weeks from date.

C.O. 2063 of 2023 is disposed of with the above terms without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)