

27.06.2024
(D/L-08)
Ct.-19
(Susanta)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

C.O. 2201 of 2024

Sri Satya Narayan Banerjee (Bandyopadhyay) & Ors.
-Vs-
Sri Ashis Baliyal & Ors.

Mr. Sukumar Ghosh,
Ms. Moumita Ghosh,
... For the Petitioners.

The instant application under Article 227 of the Constitution of India is directed against order no. 73 dated May 06, 2024 passed by the learned Civil Judge (Senior Division), Chandernagore, in Title Appeal No. 38 of 2022 whereby the Appeal Court below has dismissed an application filed by the petitioners under Order VI Rule 17 of the Code of Civil Procedure.

The petitioners were the plaintiffs in Title Suit no. 11 of 2005, out of which the aforementioned appeal arises.

The 2nd Court of learned Civil Judge (Junior Division), Chandernagore, District: Hooghly, by the judgment and decree dated April 26, 2010, had dismissed the said suit.

The petitioners being aggrieved by the said judgment and decree have preferred the connected appeal. In the said appeal, the petitioners took out an application for amendment of their plaint.

The learned Trial Judge by the order impugned has dismissed the said application holding, *inter alia*, that the proposed amendment is with regard to the devolution of the property upon the plaintiffs which was always within their knowledge, but the plaintiffs did not attempt to amend their plaint to bring the said fact on record before the commencement of trial.

Mr. Ghosh, learned advocate for the petitioners submits that the commencement of trial is not an absolute bar to allow an application for amendment.

In support of such contention, he places reliance on the decisions of the Hon'ble Supreme Court in the cases of ***Chander Kanta Bansal Vs. Rajinder Singh Anand*** reported in (2008)5 SCC 117 and ***Nitaben Dinesh Patel Vs. Dinseh Dahyabhai Patel*** reported in (2021) 20 SCC 210.

Heard Mr. Ghosh, perused the materials on record.

The application for amendment fails to qualify the requirement of the proviso appended to Order VI Rule 17 of the Code of Civil Procedure.

The decisions of the Hon'ble Supreme Court cited by Mr. Ghosh are wholly misplaced inasmuch as, in both the decisions, the Hon'ble Supreme Court has cautioned that amendment of pleading after commencement of trial can only be made on satisfaction of the requirements of proviso appended to Order VI Rule 17 of the Code.

The order impugned, therefore, does not call for any interference.

C.O. 2201 of 2024 is dismissed without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

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.)