

S/L 19
09.02.2024
Court. No. 3
Suvayan

CO 2363 of 2023

**Dharma Das Ghatak & Ors.
Vs.
Prakash Kumar Jha**

*Mr. Ashik Kumar Roy
Mr. Anirban Roy*

...for the petitioners.

*Mr. Rajdeep Bhattacharya
Mr. Prabir Mondal
Mr. Debashis Banerjee
Mr. Arpayan Mukherjee*

...for the opposite party.

1. Both the petitioners and the opposite party are represented by their respective learned Advocates.
2. In this revisional application the Order No. 20 dated 27.06.2023 as passed by learned Judge, Commercial Court at Asansol, Purba Bardhaman in connection with I.A. No. 14 of 2023 arising out of Title Suit No. 06 of 2022 has been impugned.
3. By the impugned order learned Trial Court in a suit for declaration and injunction has been pleased to reject the plaintiffs' application for amendment as filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure.
4. In support of the instant revisional application Mr. Roy, learned Advocate for the plaintiffs/petitioners at the very outset draws attention of this Court to the plaint as filed in Title Suit No. 06 of 2022 before the learned Trial Court. It is contended that originally the said suit was filed for decree for declaration and injunction with a

prayer that the deed of conveyance as executed by the plaintiffs in favour of the defendant in respect of the scheduled mentioned property may be cancelled since the same is invalid, fraudulent, void *ab initio*, sham transaction, in-operative and so on.

5. It is argued by Mr. Roy, learned Advocate for the plaintiffs/petitioners that while disposing an injunction application in the said suit learned Trial Court came to a finding that the suit as filed by the plaintiffs before the learned Trial Court is *prima facie* not maintainable. It is contended by Mr. Roy that in view of such observation the plaintiffs have been compelled to come forward with an application for amendment which according to Mr. Roy is very much necessary for effective adjudication of the suit as well as for determining the real questions in controversy between the parties.

6. It is further argued by Mr. Roy that the learned Trial Court while passing the impugned order failed to visualise the true implication of the proposed amendment and thus misdirected himself in passing the order of rejection.

7. While opposing the instant revisional application Mr. Bhattacharya, learned Advocate for the defendant/opposite party contended that the learned Trial Court is very much justified in passing the impugned order since by the proposed amendment the plaintiffs have practically made an attempt to change the nature and character of the suit which is not permissible in the

eye of law and which is not the spirit of the provision of Order VI Rule 17 of the Code of Civil Procedure.

8. On perusal of the entire materials as placed before this Court especially the copy of the plaint and the application for injunction as filed before the learned Trial Court it reveals that before the learned Trial Court though the plaintiffs have initially filed the aforementioned suit for declaration and injunction but by way of proposed amendment the plaintiffs have made an attempt to convert the said declaratory suit to a suit for recovery of money which is not at all permissible in the eye of law by way of amendment.

9. In considered view of this Court the prayer for amendment more specifically, the prayer for amendment of the prayer portion of the plaint tantamounts to change of nature and character of the suit and that the said proposed amendment for prayer does not come under the purview of the proviso of Section 34 of the Specific Relief Act which deals with the prayer for consequential relief.

10. In view of the discussion made hereinabove this Court is of considered view that learned Trial Court is perfectly justified in passing the impugned order and thus there is no requirement at all from this Court to interfere with the said order.

11. The instant revisional application being CO 2363 of 2023 is, thus, dismissed on contest but considering the facts and circumstances of the present case without any order as to costs.

12. Consequently, the impugned Order No. 20 dated 27.06.2023 as passed by learned Judge, Commercial Court at Asansol, Purba Bardhaman in connection with I.A. No. 14 of 2023 arising out of Title Suit No. 06 of 2022 is hereby affirmed.

13. Parties to act on the server copies of this order.

14. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)